Attachment #1

AMENDED AND RESTATED

SOLID WASTE FACILITIES OPERATIONS AGREEMENT

AMONG

THE CITY OF BRYAN, TEXAS,

THE CITY OF COLLEGE STATION, TEXAS, AND

BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY, INC.

STATE OF TEXAS §
§
COUNTY OF BRAZOS §

AMENDED AND RESTATED
SOLID WASTE FACILITIES OPERATIONS AGREEMENT

THIS **AMENDED AND RESTATED SOLID WASTE FACILITIES OPERATIONS AGREEMENT** (this "Agreement" or "Operations Agreement") is dated and entered into as of _____, 2013, by and among the Brazos Valley Solid Waste Management Agency, Inc. ("the Agency" or "BVSWMA"), a Texas non-profit corporation created pursuant to Subchapter D of Chapter 431, Texas Transportation Code, as amended ("Chapter 431") and Chapter 394, Texas Local Government Code ("Chapter 394" and together with Chapter 431, the "Act"), the City of Bryan, Texas ("Bryan"), and the City of College Station, Texas ("College Station"), each a Texas home rule municipality (Bryan and College Station, individually, a "City" and collectively, the "Cities").

RECITALS

WHEREAS, the Cities and the Agency previously entered into that certain Solid Waste Facilities Operations Agreement dated _____, 2010; and

WHEREAS, the Cities and the Agency desire to amend and restate the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, Bryan, College Station, and the Agency agree as follows:

ARTICLE I
DEFINITIONS

1.01. DEFINITIONS AND INTERPRETATIONS. In addition to the definitions stated in the preamble hereof, the following words and phrases as used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

"Additional Entity" or "Additional Entities" means any city or cities in addition to Bryan and College Station, or any county or other political subdivision with which the Agency may enter into a contract pursuant to this Agreement, following consent by Bryan and College Station to the addition of each such Additional City, for receiving, treating, and disposing of MSW through the Facilities.

"Additional Facilities" means any improvements, enlargements, or additions to the Initial Facilities and any extensions, repairs, or replacements of the Initial Facilities of Facilities acquired, constructed, used, operated, or otherwise incorporated into or made part of the Facilities in the future by the Agency, including, but not limited to, transfer stations.

"Agreement" or "Operations Agreement" means this Agreement and any similar agreements executed between the Agency and Additional Cities with respect to the Facility.

"Annual Expense Budget" means the total amount of money required for the Agency to pay (1) all Operation and Maintenance Expense of the Facilities, (2) the principal of, redemption premium, if any, and interest on its Bonds, (3) any amounts required to be deposited in any special or reserve funds, including any debt service reserve fund, repair and replacement fund, and/or any post-closure maintenance fund, (4) all obligations with respect to any Credit Agreement, and all other amounts as required to be established, maintained and/or paid by the provisions of any Bond Resolution, (5) any Debt Reimbursement payable to the Cities, and (6) any amounts due and payable to Grimes County, Texas, pursuant to the Grimes County Agreement.

"Articles" means the Articles of Incorporation or Certificate of Formation of the Agency on file with the Texas Secretary of State, and shall include all amendments thereto and restatements thereof.

"Board" means the Board of Directors of the Agency.

"Bond Resolution" means any resolution of the Board of Directors of the Agency authorizing the issuance of Bonds and providing for their security and payment, as such resolution(s) may be (i) amended from time to time as therein permitted and (ii) the substance and form of which is approved by the Cities.

"Bonds" means any bonds, notes, or other obligations to be issued or entered into by the Agency pursuant to this Agreement and the Governing Documents and similar agreements with Additional Cities for the acquisition, construction, enlargement, improvement, extension, repair, replacement, or closure of the Facilities or any part thereof, whether in one or several issues, or any obligations issued by the Agency to refund any or all of same.

"Bryan Assets" has the meaning assigned to said term in the Asset Transfer Agreement.

"Bryan Debt" means proceeds obtained from the sale of bonds, certificates of obligation, or other debt instruments that were used by Bryan to construct, purchase, operate, repair, or maintain BVSWMA Assets or Bryan Assets.

"BVSWMA Assets" has the meaning assigned to said term in the Asset Transfer Agreement.

"Bylaws" means the Bylaws of the Agency and all amendments thereto.

"College Station Assets" has the meaning assigned to said term in the Asset Transfer Agreement.

"College Station Debt" means proceeds obtained from the sale of bonds, certificates of obligation, or other debt instruments that were used by College Station to construct, purchase, operate, repair, or maintain BVSWMA Assets or College Station Assets.

"Credit Agreement" means any credit agreement, as defined in Chapter 1371, Texas Government Code, which the Agency enters into relating to its obligations with respect to the Bonds, the substance and form of which is approved by the Cities; provided, however, for purposes of this Agreement, "Credit Agreement" shall not include Interest Rate Management Agreements as defined in Chapter 1371, Texas Government Code.

"Estimated Contributing Weight" shall mean the Agency's estimated weight of the total MSW to be delivered to all Points of Delivery for an upcoming Fiscal Year as determined by historical usage and reasonable anticipated growth based on Prudent Utility Practice.

"Facilities" mean the Initial Facilities, together with all Additional Facilities, including all real and personal property, acquired or constructed with proceeds from the sale of Agency's Bonds, if any, or payments made to the Agency by the Cities or other Persons made available to the Agency by the Cities, if any, pursuant to this Agreement and all similar agreements with Additional Entities, and used or operated by the Agency for receiving, treating, and disposing of Solid Waste of and for the Cities and other Persons. "Facilities" shall include only those facilities that provide service to the Cities pursuant to this Agreement and all similar agreements with Additional Cities and other facilities which provide service to other Persons and, unless otherwise agreed to by the Agency and the Cities, does not include trucks or other equipment and facilities used for the initial local pickup or collection of Solid Waste, including specifically garbage, within the Cities and the transportation thereof to the designated Point of Delivery.

"Fiscal Year" means the twelve (12) month period beginning each October 1 and ending the following September 30, or such other twelve (12) month period as may be established in the future to constitute the Agency's Fiscal Year as approved by the Cities.

"Fiscal Year of the City" means the respective Fiscal Year of each City, which currently begins on October 1 of each year for each of Bryan and College Station, as each such fiscal year may be changed from time to time with notice to the Agency.

"Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, terrorist attacks, orders of any kind of the Government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, or any other causes not reasonably within the control of the party claiming such inability.

"Governing Documents" means, collectively, the Articles and the Bylaws.

"Grimes County Agreement" means that certain *Agreement By and Between Grimes County, Texas, the City of Bryan, Texas, and the City of College Station, Texas,* dated April 22,

2002, relating to certain matter regarding the permitting and development of the Twin Oaks Landfill including, but not limited to, the payment of a host fee to Grimes County, Texas.

"Initial Facilities" means the BVSWMA Assets, Bryan Assets, and College Station Assets conveyed to the Agency pursuant to the Asset Transfer and Debt Reimbursement Agreement, including, but not limited to, the Rock Prairie Road Landfill, the Twin Oaks Landfill and the City of Bryan Compost Facility.

"Land" means the real property to be used for the construction and operation of the Facilities, together with any improvements thereto.

"Municipal Solid Waste" (sometimes referred to hereafter as "MSW") shall have the same meaning as set forth in 30 T.A.C. §330.3, as amended from time to time by the TCEQ.

"Operation and Maintenance Expense" means all costs of operation and maintenance of the Facilities including, but not limited to:

(a) repairs and replacements to the extent funds are not held in a special fund;

(b) the cost of utilities, supervision, engineering, accounting, auditing, regulatory costs, legal services, insurance premiums, and any other supplies, services, administrative costs, and equipment necessary for proper operation and maintenance of the Facilities; and

(c) payments made for the use or operation of any property, payments of fines, and payments made by the Agency in satisfaction of judgments or other liabilities resulting from claims not covered by the Agency's insurance or not paid by one particular City arising in connection with the operation and maintenance of the Facility. Depreciation shall not be considered an item of Operation and Maintenance Expense.

"Permits" mean the licenses or permits issued or to be issued by the TCEQ with respect to operation, maintenance, and expansion of any component of the Facilities, including, but not limited to:

a. TCEQ Municipal Solid Waste Disposal Permit No. 1444C with respect to the Rock Prairie Road Landfill**;**

b. TCEQ Municipal Solid Waste Disposal Permit 2292 with respect to with respect to the State Highway 30 Landfill (also known as the Twin Oaks Landfill);

c. TCEQ Municipal Solid Waste Registration No. 42003 with respect to the City of Bryan Composting Facility.

"Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership association, or any other legal entity that is not the Cities, including, without limitation, any Additional Entity.

"Point of Delivery" means any point, as designated by the Agency, at which Solid Waste is received by the Agency from a City or from such other Persons as may be permitted to dispose of Solid Waste at the Facility pursuant to Section 5.04 of this Agreement.

"Prudent Utility Practice" means any of the practices, methods, and acts, in the exercise of reasonable judgment, in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the solid waste industry prior thereto, known at the time the decision was made, that would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. The Parties understand, acknowledge and agree that Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act at the exclusion of all others, but rather is a spectrum of possible practices, methods, or acts that could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition.

"Recyclable Material" shall have the same meaning as set forth in 30 T.A.C. §330.3, as amended from time to time by the TCEQ.

"Related Agreements" means the Asset Transfer Agreement, the Borrowed Employee Agreement, the Grimes County Agreement, the ILA, and any other agreement(s) entered by and between the Cities pursuant to or in accordance with any of the foregoing described agreements.

"Sludge" shall have the same meaning as set forth in 30 T.A.C. §330.3, as amended from time to time by the TCEQ.

"Special Waste" shall have the same meaning as set forth in 30 T.A.C. §330.3, as amended from time to time by the TCEQ.

"State" means State of Texas.

"T.A.C." means the Texas Administrative Code, as amended.

"TCEQ" means the Texas Commission on Environmental Quality or its successor agency.

"Trustee" means any trustee named under a trust indenture entered into by the Agency securing the payment of the Bonds and authorized by a Bond Resolution or any paying agent named under, and authorized by, a Bond Resolution.

1.02. INTERPRETATION. The caption headings of this Agreement are for reference purposes only and shall not affect its interpretation in any respect. Unless the context otherwise requires, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa. This Agreement and all the terms and provisions shall be liberally construed to effectuate the purpose set forth herein and to sustain the validity of this Agreement.

ARTICLE II
PROVIDING OF FACILITIES BY THE AGENCY

In order to provide services and facilities for receiving, treating, and disposing of Solid Waste for the Cities and other Persons as provided in this Agreement, the Agency will operate and maintain the Facilities, and will from time to time enlarge, improve, repair, replace, and/or extend the Facilities. In accordance with and upon the closing of the Asset Transfer Agreement, or as soon after the closing as reasonably possible, the Agency shall obtain and hold in its name all required permits and licenses from the appropriate federal and State agencies, and each City shall assist the Agency in obtaining same, and shall assign or transfer, or cause to be assigned or transferred, to the Agency any such permits for the Facilities now or hereafter held by the Cities. The Agency shall provide, manage, operate, and maintain the Facilities in such manner as it determines is necessary pursuant to Prudent Utility Practice for providing adequate, efficient, and economical service to Cities, and shall have the right to use or discontinue the use of any part of the Facilities as the Agency deems necessary.

ARTICLE III
COLLECTION OF SOLID WASTE

3.01. DELIVERY. Each City hereby agrees, to the extent it legally may, to deliver or cause to be delivered all of the Solid Waste (except Sludge, if a City so opts), attributable to and generated within the incorporated limits of each such City, and which is otherwise collected by Cities from the generator of said Solid Waste, to the Facility, subject to the recycling provisions of Section 3.06, provided such Solid Waste meets the requirements for quality as set forth in Article IV of this Agreement; but delivery of Solid Waste shall commence only after notice by the Agency that it is ready to receive the same pursuant to this Agreement.

3.02. POINT OF DELIVERY; CONVEYANCE TO POINT OF DELIVERY. Each City shall deliver or cause to be delivered all Solid Waste attributable to and generated within such City to the designated Point of Delivery for such City. Unless and until otherwise agreed by a City and the Agency, the respective Cities shall be solely responsible for (a) collecting or causing to be collected and (b) delivering or causing to be delivered all of such Solid Waste attributable to and generated within the incorporated limits of such City to the Point of Delivery.

3.03. QUANTITY AT POINT OF DELIVERY. The quantity of Solid Waste conveyed by each City to the Point of Delivery shall be measured by the Agency by weight and the total weight of Solid Waste received during each calendar month shall be used to determine each City's payments to the Agency as required by Article V.

3.04. LIABILITY FOR DAMAGES AND RESPONSIBILITY FOR DISPOSAL. Liability for damages arising from the collection, transportation and delivery of all Solid Waste delivered by each City hereunder shall remain in the respective City (the "Collecting Party") to the Point of Delivery, and after the Solid Waste is weighed at the Point of Delivery, liability for such damages shall pass to the Agency, provided the Solid Waste collected, transported and delivered is of the type and quality that the Agency is legally authorized to accept. As between

the Agency and each City, for any liability related to Solid Waste, while that Solid Waste was or is in the control of such Collecting Party, each Collecting Party agrees, to the extent permitted by law, to indemnify and to save and hold the other parties harmless from any and all claims, demands, causes of action, damages, losses, costs, fines, and expenses, including reasonable attorney's fees that may arise or be asserted by anyone at any time on account of the collection, transportation, and delivery of such Solid Waste while it was or is in the control of such Collecting Party. The Agency has the responsibility as between the parties for the proper reception, transportation, treatment, and disposal of all Solid Waste received by it at Point of Delivery, subject to the other provisions of this Agreement and provided the Solid Waste received, transported, delivered, or disposed of is of the type and quality that the Agency is legally authorized to accept.

3.05. MEASUREMENT OF SOLID WASTE. The Agency will furnish, install, operate, and maintain at its own expense at each Point of Delivery the necessary equipment and devices of standard type for measuring properly the weight of all Solid Waste delivered under this Agreement. Such equipment and devices shall remain the property of the Agency. Each City shall have access to such equipment and devices at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the Agency. In accordance with Chapter 12 of Title 4 of the Texas Administrative Code, the devices will be registered annually through the Texas Department of Agriculture – Weights and Measures Program. Certificate(s) of registration will be prominently displayed within the main building(s) so as to, during regular business hours, be in plain sight of, legible to, and physically accessible to the Cities. Each City shall have access to such equipment and devices at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the Agency. Not less than four (4) times in each calendar year of operation, the Agency shall employ a licensed service/inspection company to calibrate all measurement equipment and devices. All service reports will be entered upon proper books of record maintained by the Agency. Upon written request, any City may have access to said record books during reasonable business hours.

3.06. RECYCLING. Each City may recycle Recyclable Materials and dispose of the Recyclable Materials with an entity other than the Agency until such time as the Agency enters the recycling business for the same Recyclable Materials and for the same or better price, inclusive of transportation, than the City is then receiving, at which time the City shall deliver its Recyclable Materials to the Agency, subject to any existing agreement terms and conditions. Once the Agency enters into the recycling business, the Cities may not deliver its Recyclable Materials to another entity or person other than the Agency, nor may either City grant a franchise or other contract to another entity or person for such service.

3.07. OPERATIONAL TIMES AND DATES. The Agency shall operate the Facilities so that they are open and available for the delivery of MSW at least on the following days and times:

Name of Facility	Times and Days Open to Public	Times and Days Open for Receipt of MSW from Cities

Name of Facility	Times and Days Open to Public	Times and Days Open for Receipt of MSW from Cities
Pleasant Hill Road Compost Facility	8:00 AM to 5:00 PM. Monday through Friday; 7:30 AM to 3:30 PM on Saturdays	Same as public
Twin Oaks Landfill	7:00 AM to 5:00 PM Monday through Friday; 7:00 AM to 1:00 PM on Saturdays	Same as public

The Agency may, but is not obligated to, close the Facilities for receipt of MSW on New Year's Day, Thanksgiving Day, and Christmas Day. The Agency shall reasonably cooperate with the Cities and other local government entities to open for receipt of MSW at additional times other than those set forth above at the discretion of the Director.

3.08. COLLECTION BY THIRD PARTIES. In the event a City contracts with a third party for the collection of MSW or Recyclable Materials as described in Section 3.01, the City shall incorporate into such contract the obligations set forth in Sections 3.01, 3.02, 3.03, and 3.04, above, so that said third party shall perform and comply with the obligation of the City pursuant to said sections. No solid waste collection contract with a third party shall relieve a City of its obligations to pay its payments as set forth in Section 5.03.

ARTICLE IV
QUALITY

4.01 GENERALLY. Each City shall deliver to the Facilities, and Agency shall only be obligated to accept delivery from the Cities, MSW that complies with quality requirements that the Agency finds it necessary from time to time to establish in order to comply with the Permits.

4.02 SPECIAL WASTE. If a City or Person wishes for the Agency to accept and dispose of Special Waste, and the Special Waste at issue may be accepted for disposal by the Agency in accordance with the Permits, the Agency may, at its option, agree to accept and dispose of same, provided that such City or Person must pay a surcharge set by the Agency for such service, which surcharge shall be set by the Agency to be an amount at least equal to any extra costs involved in such disposal.

4.03 TWIN OAKS LANDFILL SPECIAL PROVISIONS. In accordance with the provisions of the Grimes County Agreement, the Agency understands, acknowledges, and agrees that the Agency is prohibited from using the property constituting the Twin Oaks Landfill as a separately permitted industrial hazardous waste facility.

ARTICLE V
PAYMENTS

5.01. FINANCING. Subject to the prior approval of the Cities as required by the Governing Documents, the Agency will use its best efforts to issue Bonds from time to time, in amounts and at times as determined by the Agency to acquire, construct, expand, and add to the facilities. Such agreement of the Agency to issue Bonds is subject in all events to the ability of the Agency to sell and deliver Bonds in amounts, at such interest rates and at the times sufficient to pay for the Facilities and the ability of the Agency to obtain the necessary property, equipment, labor, materials, and contractors to provide same.

5.02. ANNUAL EXPENSE BUDGET. The Parties acknowledge and agree that payments to be made under this Agreement and similar agreements with Additional Entities, investment income, revenues received from other Persons for the use of the Facilities, and other revenues attributable to the Facilities will be the only sources available to the Agency to provide the Annual Expense Budget; and that the Agency has a statutory duty pursuant to Texas Health & Safety Code §363.144 to establish and from time to time to revise the charges for services to be rendered and made available to Cities and other Persons hereunder ("the Rate Schedule") so that the Annual Expense Budget shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) **Operation and Maintenance Component.** An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses; and

(b) **Bond Service Component**. A "Bond Service Component" equal to:

(1) the principal of, redemption premium, if any, and interest on, the Agency's Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or other sources if permitted by any Bond Resolution; and

(2) during each Fiscal Year, the proportionate part of any special or reserve funds required to be established and/or maintained by the provisions of any Bond Resolution including the Debt Service Reserve Fund established by the Bond Resolution authorizing the initial issuance of Bonds; and

(3) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

(4) an amount sufficient to pay all obligations with respect to any Credit Agreement, as required to be established and/or maintained by the provisions of any Bond Resolution; and

(5) the charges of paying agents for paying principal of, redemption premium, if any, and interest on, all Bonds;

(c) <u>Debt Reimbursement Component.</u> A "Debt Reimbursement Component" equal to the amount needed to:

(1) pay to Bryan an amount equal to the payments to be made by Bryan on the Bryan Debt for the fiscal year to which the Annual Expense Budget applies in accordance with the payment schedule set forth in Exhibit "A", attached hereto and incorporated herein by reference; and

(2) pay to College Station an amount equal to the payments to be made by College Station on the College Station Debt for the fiscal year to which the Annual Expense Budget applies in accordance with the payment schedule set forth in Exhibit "B", attached hereto and incorporated herein by reference.

<u>5.03. MONTHLY PAYMENTS BY CITIES.</u> For services and facilities to be provided to each City by the Agency under this Agreement, each City agrees to pay Agency based on the actual weight of MSW delivered to the Facilities multiplied by the unit price set forth in the Rate Schedule applicable to the Cities. Agency shall prepare and deliver an invoice to each City each month for charges related to MSW delivered to Agency for the prior month and for all other amounts due and owing by the City to the Agency through the last calendar date of the month prior to issuance of the invoice. Cities shall pay their invoices not later than thirty (30) days after receipt of the invoice from Agency.

<u>5.04. DELINQUENT PAYMENTS.</u> Payments not made by a City on or before the thirtieth (30th) day following receipt of the invoice for same shall be deemed delinquent. Interest shall accrue on delinquent payments at the rate authorized pursuant to Ch. 2251 of the Texas Government Code, as amended. The Agency is authorized to discontinue service to any City which fails to make any delinquent payment on or before the tenth (10th) day after the Agency provides written notice to such City in accordance with Tex. Govt. Code §2251.051.The Agency shall not be obligated to recommence provision of service to a City to whom services have been discontinued pursuant to this Section 5.04 until all past due amounts, including any accrued interests and reasonable costs of collection authorized by law, have been paid to the Agency.

<u>5.05. ANNUAL BUDGET OF AGENCY.</u> The Agency shall adopt and approve an Annual Budget in accordance with applicable provisions of the Governing Documents. The Annual Budget shall, as a minimum, reflect the Annual Expense Budget and all reasonable anticipated revenues for the Fiscal Year for which the Annual Budget is to be adopted.

<u>5.06. ANNUAL BUDGETS OF CITIES; APPROPRIATION.</u> Each City shall make provision in its annual budget and shall appropriate an amount sufficient, at a minimum, for the payment of all amounts required to be paid by the City under this Agreement. In accordance with the foregoing, and pursuant to the authority of Texas Health & Safety Code §363.119(c), College Station, having established a Sanitation Fund, and Bryan, having established its Solid Waste Fund, agree that the revenues received into said funds shall be the sole source of payment of their respective obligations under this Agreement.

5.07. INTEREST INCOME. All interest income earned by the investment of any funds created pursuant to any Bond Resolution shall be credited towards the payment of the Bond Service Component and taken into account in determining the Annual Expense Budget; except as to any fund or account created pursuant to the terms of a Bond Resolution or any financing document authorized by such Bond Resolution and funded from and Bond proceeds, together with all interest income earned by the investment thereof may, at the option of the Agency, be credited to such fund or account and used for the purposes for which the Bonds are issued, or be credited towards the payment of the Bond Service Component.

5.08. PLACE OF PAYMENT. Except to the extent otherwise provided by any Bond Resolution or as may otherwise be amended by written notice by the Agency to the Cities, all amounts due under this Agreement shall be paid and be due at the principal administrative offices of the Agency.

5.09. ABSOLUTE AND UNCONDITIONAL OBLIGATION TO PAY BOND SERVICE COMPONENT AND DEBT REIMBURSEMENT COMPONENT.

(a) Agency Mistake on Amount Not Excuse. Notwithstanding anything herein to the contrary, no failure of the Agency to estimate, and no mistake by the Agency in any estimate of, the amount of or schedule for the Bond Service Component or the Debt Reimbursement Component of the Annual Expense Budget due from each City in any Fiscal Year shall relieve each City from (or defer) its respective absolute and unconditional obligation to make payment of the Bond Service Component of the Annual Expense Budget in full when due.

(**b) Obligation to Pay Debt Service.** Notwithstanding anything to the contrary contained in this Agreement, the Cities each agree that they shall be unconditionally obligated to pay their respective proportionate share of the Bond Service Component and Debt Reimbursement of the Annual Expense Budget.

5.10. OTHER USE OF FACILITY.

(a) Charge for Use. Notwithstanding other provisions of this Agreement to the contrary, the Agency may provide excess available Solid Waste disposal capacity of the Facilities to any Person, provided that any such service shall in all events be subordinate and subject to the rights of the Cities under this Agreement; and provided further that the Agency must charge an amount not less than the unit cost by weight for MSW disposal being paid by any City.

(b) Discounted Charge or Free Use. With the approval of the Agency Board, the Agency may authorize a discounted charge for use of the Facilities, but in no event shall the charge be less than the current rate paid by the Cities. The Agency may offer occasional no-charge services in support of community clean up and/or recycling events in one or both of the Cities and other similar events the purpose of which are to benefit and improve the community where the event occurs. Any no-charge service provided pursuant to this Section 5.10(b) will be accounted for and reported to the

Agency Board following the conclusion of the event. Furthermore, the Agency may provide a discounted rate or free disposal of clean fill dirt or other materials that can be used by the Agency in the operation of the Facilities in lieu of purchases that would otherwise be required by the Agency.

5.11. GENERAL COVENANTS. Each City further represents, covenants, and agrees that in accordance with and to the extent permitted by law:

(a) **Home-Rule City.** It is a duly created and existing home rule city of the State and is duly authorized under the laws of the State to enter into this Agreement; that all action on its part for the execution and delivery of this Agreement has been duly and effectively taken; and that this Agreement is a valid and enforceable special obligation of such City in accordance with its provisions, subject to laws applicable to such City relating to bankruptcy, reorganization and other similar matters affecting creditors' rights generally.

(b) **Competing Facilities.** To the extent it legally may, it will:

(1) not grant any franchise or permit for the acquisition, construction, or operation of any facilities within its corporate limits that might be used as a substitute for or be in competition with the Facilities;

(2) prohibit any such competing facilities to the Facilities within its corporate limits;

(3) not acquire or develop any facilities that would compete with the Facilities or otherwise result in the diversion of MSW from the Facilities.

(c) **Disposal of MSW at Facilities.** To the extent it legally may, unless otherwise expressly provided in this Agreement, each City agrees to commit and dedicate all generated MSW collected or controlled by it, other than Sludge, to the Facilities, and if the Facilities and their operations expand to handle other disposables beyond MSW, each City's mandatory disposal commitment shall expand to include the disposables being processed by the Agency.

(d) **Diversion or Reduction in Waste Stream.** Each City agrees that it will:

(1) inform the Agency of any diversion or reduction in its respective waste stream, and the reason therefor, in order that the Agency may measure the impact on joint solid waste management operations and costs; and

(2) attempt to make waste stream diversion and reduction on a joint basis so as to absorb together the financial impact on the tipping fee that such reduction/diversion may create.

5.12. RATE SCHEDULE. The Agency shall by resolution establish the Rate Schedule to include rates, charges, and fees to be charged to and paid by each City and any Person using the Facilities. Without regard to local market rates at similar facilities, the Rate Schedule applicable to the Cities shall be based on unit prices established by taking into consideration the Annual Expense Budget and its various components as defined in Sections 1.01 and 5.02 of this Agreement, the Estimated Contributing Weight (inclusive of all anticipated users of the Facilities), estimated revenues to the Agency from all sources, and current and reasonably projected economic conditions**.** To the extent establishment of different rates applicable to different classifications of customers are allowed by law, the Rate Schedule applicable to anyone other than the Cities shall be based on the local market rate for services provided by facilities with similar operations and similar TCEQ classifications as the Facilities, but in no case less than the Rate Schedule applicable to the Cities. Upon approval of the Rate Schedule and any amendments to the Rate Schedule by the Agency, the Rate Schedule shall be submitted to the Cities for approval by their respective governing bodies, which approval shall not be unreasonably withheld or delayed. Failure of either City to object to the Rate Schedule or any part thereof on or before the thirtieth (30th) day after submission to the City shall be deemed an approval of the part(s) to which objection is not made. If the rate for a particular service contained in the Rate Schedule and/or the entire Rate Schedule for a Fiscal Year is not approved by one or the other City, then the rate(s) with respect to the service(s) provided by the Agency for the prior Fiscal Year shall remain in place. Notwithstanding anything herein to the contrary, to the extent allowed by law, the Agency may establish rates for Persons other than the Cities that are higher, but not lower, than those charged to the Cities without the prior approval of the Cities.

ARTICLE VI
MISCELLANEOUS OPERATIONAL MATTERS

6.01. ANNUAL BUSINESS PLAN. The first meeting of the Board of Directors of each calendar year shall include a workshop session which shall include the following:

(a) Discussion and review of BVSWMA performance, including (i) environmental compliance, (ii) financial performance, (iii) capital reserves, (iv) landfill rates, (v) site density, and (vi) customer satisfaction;

(b) Discussion and consideration of long-term development issues concerning BVSWMA, including but not limited to such items as landfill expansions and/or changes in BVSWMA's scope of services;

(c) Discussion of other considerations or concerns of the Board; and

(d) Review of the Executive Director, including but not limited to a review of the Executive Director's past job performance and current goals and expectations of the Executive Director.;

Following the above-described workshop session, the Executive Director shall prepare an Annual Business Plan summarizing the workshop discussion of items (a) through (c) of this section. Such Annual Business Plan shall be presented to the Board at the next regularly scheduled meeting of the Board of Directors for approval by the Board of Directors.

6.02. ADDITIONAL REPORTING TO CITIES. The Agency shall deliver to the Cities various reports and notifications that include as a minimum the following:

(a) Monthly Reports. Reports to be delivered not later than forty-five (45) days after the last day of the reporting period, to include:

(1) Revenues for the preceding month and Fiscal Year-to-Date received from all sources by the Agency;

(2) Expenses of the Agency for the preceding month and Fiscal Year-to-Date; and

(3) Tonnage of MSW received for the preceding month and Fiscal Year-to-Date for each Facility, both cumulative and broken down by each City and third parties.

(b) Annual Report. The Annual Report shall include the final Monthly Report of the fiscal year and shall include a year-to-date financial summary and the Annual Audit required under Section 9.08 herein.

(c) Other Notices. Not later than five (5) business days after receiving the information, the Agency shall notify each City about any filed or threatened litigation against the Agency and any Notice of Permit violations related to operations of the Facilities.

6.03. DEBT REIMBURSEMENT. Not later than the date set forth in Exhibits "A" and "B" hereto, the Agency shall pay Bryan and College Station the amounts set forth in the Debt Reimbursement Schedules. In the event the Agency fails to make such payments on the date required, the City to whom payment was not timely made may, at its sole option and as its sole remedy, reduce the invoiced amounts due to the Agency by the amount of the delinquent Debt Reimbursement Payment. Notwithstanding the Agency's default of this Section 6.03, the City to whom the delinquent payment was due shall not be relieved or excused from the payment of its Monthly Payment required by Section 5.03 except to the extent of the payment reduction allowed by this Section 6.03.

ARTICLE VII
ADDITIONAL CAPACITY AND FACILITIES

As the responsible agency for the establishment, administration, management, operation, and maintenance of the Facilities, the Agency will, subject to the approval of the Cities as required by the Governing Documents, from time to time determine when and to what extent it is

necessary to provide Additional Facilities to receive, transport, treat, and dispose of the Solid Waste of the Cities and to issue Bonds, subject to the provisions of this Agreement, to accomplish its purposes.

ARTICLE VIII
REMEDIES

8.01. REMEDIES. Notwithstanding anything in this Agreement to the contrary, as governmental entities, each City and the Agency have not waived immunity from suit and liability under Texas law and the execution and delivery of this Agreement does not constitute such a waiver. The foregoing sentence notwithstanding and to the extent permitted by law, the obligations, agreements, and covenants of the Agency and each City (including, without limitation, the obligation of each City to pay the Annual Expense Budget, as provided herein) contained in this Agreement may be enforced by any party to this Agreement and any holder of Bonds of the Agency by such suits, actions, or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for mandamus or the specific performance of any covenant or agreement contained herein.

8.02. LEGAL AUTHORITY. In entering into this Agreement and performing all duties and obligations hereunder, the Cities and the Agency exercise their authority under and in accordance with the constitution and laws of the State including, but not limited to the Act, Chapter 362, Texas Health & Safety Code, the Governing Documents, the Cities' Charters; and all other laws that may authorize this Agreement, all of which provisions and laws, cited or uncited herein, shall cumulatively provide the authority for this Agreement.

ARTICLE IX
MISCELLANEOUS

9.01. EFFECTIVE DATE. This Agreement shall become effective on the date signed by the authorized representatives of the Agency and the Cities ("the Effective Date").

9.02. TERM OF AGREEMENT. This Agreement shall continue in force from the Effective Date at least until all Bonds, including any Bonds issued to refund same, and the interest thereon, the Bryan Debt, and the College Station Debt, shall have been paid in full; and shall also remain in force thereafter until dissolution of the Agency pursuant to the Governing Documents and applicable state law.

9.03. RECITALS. The recitals set forth in the preamble to this Agreement are incorporated in and made a part of this Agreement for all purposes.

9.04. NOTICES. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by either party to the other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate,

addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If intended for City of College Station:

City of College Station, Texas
Attn: Mayor
1101 Texas Avenue
P.O. Box 9960 (77842)
College Station, Texas 77840

With copy to:

City Attorney
1101 Texas Avenue
P.O. Box 9960 (77842)
College Station, Texas 77840

If intended for City of Bryan:

City of Bryan, Texas
Attn: Mayor
300 South Texas Avenue
P.O. Box 1000 (77805)
Bryan, Texas 77803

With copy to:

City Attorney
300 South Texas Avenue
P.O. Box 1000 (77805)
Bryan, Texas 77803

If intended for Agency:

Brazos Valley Solid Waste Management Agency, Inc.
Attn: Executive Director
1101 Texas Avenue
P.O. Box 9960 (77842)
College Station, Texas 77840

With copy to:

Mike Gentry
West, Webb, Allbritton & Gentry
1515 Emerald Plaza
College Station, Texas 77845

The Agency and each City hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other parties to this Agreement.

9.05. FORCE MAJEURE. In case by reason of "Force Majeure," the Agency or any City shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, but in no case later than thirty (30) days following the onset of the event or cause, the obligation of the party giving such notice, so far as it is affected by such Force Majeure (with the exception of the obligation of each City to make the payments required in Section 5.03 of this Agreement, which in all events shall be made as provided therein) shall be suspended during the continuance of the inability then claimed, but for no longer periods, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

9.06. INSURANCE. The Agency will carry insurance for such purposes and in such amounts as are determined by the Agency to be necessary or advisable. The Agency shall provide proof of insurance to the Cities on an annual basis.

9.07. REGULATORY BODIES. This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Texas, or any authorized representative or agency of any of them.

9.08. ANNUAL AUDIT OF THE FACILITIES. The Agency shall, at the close of each Fiscal Year, cause an Annual Audit of books and accounts of Agency, including the Facility, to be prepared and a copy of such Annual Audit to be provided to each City as required by the Governing Documents.

9.09. SUBORDINATION TO PERMIT/STATE OR FEDERAL LAWS. RULES. ORDERS. OR REGULATIONS. All parties understand and agree that any provision of this Agreement is subordinate to the Permits. This Agreement cannot allow or require the Agency to perform any action, or omit to take any action, that will result in the Agency violating any provision of its Permits. This Agreement is also subject to all applicable federal and State laws and any other applicable permits, ordinances, rules, orders, and regulations of any local, State, or federal governmental authority having or asserting jurisdiction but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction and each City and the Agency represent that, to the best of their knowledge, no provisions of any applicable federal or State law, including the respective City Charter of each City, nor any permit, ordinance, rule, order, or regulation of any party will limit or restrict the ability of such party to carry out their respective obligations under or contemplated by this Agreement. The Agency understands, acknowledges and agrees that to the extent required by Texas Transportation Code §431.101(g), as amended, Agency must comply with the state law applicable to the Cities with respect to design and construction of projects, including the procurement of design and construction services.

9.10. MODIFICATION. No change, amendment, or modification of this Agreement shall be made or be effective that will affect adversely the prompt payment when due of all moneys required to be paid by the Cities under the terms of this Agreement and no such change, amendment, or modification shall be made or be effective that would cause a violation of any provisions of any Bond Resolution or any financing document authorized by such Bond Resolution, including and Credit Agreement.

9.11. SEVERABILITY. The Parties specifically agree that in case anyone or more of the sections, subsections, provisions, clauses, or words of this Agreement or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Agreement or the application of such actions, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any

such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

9.12. AGREEMENT NOT FOR BENEFIT OF THIRD PARTIES. This Agreement is made for the exclusive benefit of the Cities, the Agency, the owners of the Bonds, the parties to any Credit Agreements, the underwriters of any offering of Bonds and each remarketing agent and tender agent, if any, for any Bonds, and their respective successors and assigns herein permitted, and not for any other third party or parties; and nothing in this Agreement, expressed or implied, is intended to confer upon any party or parties other than the Agency (including its officers, directors, employees, agents, and attorneys), the Trustee, the owners of the Bonds, the Cities, and the parties to any Credit Agreements, the underwriters of any offering of and remarketing agent and tender agent, if any, for any Bonds, and their respective successors and assigns herein permitted, any rights or remedies under or by reason of this Agreement.

9.13. SUCCESSION AND ASSIGNMENT. This Agreement is binding on and inures to the benefit of the parties hereto and their respective successors, representatives, and assigns. This Agreement may not be assigned by any party hereto without (i) complying with any provisions relating to the right of the parties to assign this Agreement contained in the Bond Resolution and (ii) prior written notice to and approval by the other parties, which consent may be withheld without cause. The provisions of this Section 9.13 do not affect the ability of the Agency to assign some or all of its rights in this Agreement for the benefit of the owners of the Bonds.

9.14. ENTIRE AGREEMENT. This Agreement and the Related Agreements represent the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

9.15. EXHIBITS. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

9.16. GOOD FAITH NEGOTIATION; DISPUTE MEDIATION. Whenever a dispute or disagreement arises under the terms of this Agreement, the Parties agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Parties shall refer the matter to outside mediation prior to engaging in litigation.

9.17. GOVERNING LAW. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Brazos County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the date of this Agreement.

CITY OF BRYAN

By:_____
Mayor

ATTEST:

_____
City Secretary, City of Bryan

CITY OF COLLEGE STATION

By:_____
Mayor

ATTEST:

_____
City Secretary, City of College Station

BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY, INC.

By:_____
Chairman

EXHIBIT A

BVSWMA Reporting Requirements

There are several reports defined in the Bylaws or Operations Agreement that BVSWMA must present to the Board, Cities or Technical Advisory Committee ("TAC"). These reports consist of Monthly Reports, an Annual Audit, an Annual Report, an Annual Business Plan and an Annual Budget. Below is a brief description of each of these reports along with current due dates and proposed revisions.

MONTHLY REPORTS (Due to the Board and TAC)

As stated in Section 8.04 of the Bylaws, the Executive Director of BVSWMA ("ED") shall provide a monthly operational and financial report to the Board and TAC, inclusive of entered into contracts and expenditures made by the ED on behalf of BVSWMA. Pursuant to Section 8.04 of the Bylaws, monthly reports would be due to the Board and TAC forty-five (45) calendar days upon the closure of the reporting month.

MONTHLY REPORTS (Due to the Cities)

As stated in Section 6.02 of the Operations Agreement, Monthly Reports are due to the Cities within forty-five (45) days following the end of the month addressing the items listed in such Section 6.02.

ANNUAL AUDIT (Due to the Board and Cities)

As stated in Section 4.01 of the Bylaws, the Board shall have an annual Audit prepared and upon receiving the completed audit BVSWMA shall immediately provide a copy to the Cities. The annual Audit is due one hundred twenty (120) calendar days after the close of the fiscal year, JANUARY 28.

ANNUAL REPORT (Due to the Cities)

As stated in Section 6.02(b) of the Operations Agreement, the Annual Report shall include the final Monthly Report of the fiscal year and shall include a year-to-date financial summary and the Annual Audit required under Section 9.08 herein.

ANNUAL BUDGET (Due to the Cities)

As stated in Section 4.06 of the Bylaws, the Annual Budget must be approved by a two-thirds (2/3) majority vote of the entire Board. After approval by the Board, the budget shall be submitted to each City for approval. The Annual Budget must be approved by the Board at least ninety (90) days prior to the beginning of each fiscal year, JULY 3. Pursuant to Section 2.15 and Section 4.06 of the Bylaws, a draft of the Annual Budget is to be reviewed by the TAC prior to submission to the Board for approval or to the Cities, and such draft is to be delivered to the

TAC no later than thirty (30) days prior to the date the Annual Budget is submitted to the Board for approval.

ANNUAL BUSINESS PLAN (Due to the Cities)

As stated in Section 6.01 of the Operations Agreement, a draft of the Annual Business Plan shall be presented to the Board for approval at the second regularly scheduled meeting of the Board of Directors of each calendar year.

REPORTING TIMELINE

(All reports may be submitted before the dates listed since these are considered "no later than" dates.)

	TAC	BOARD	CITIES
MONTHLY REPORTS	45 calendar days upon the closure of the reporting month - Bylaws 8.04(b)	45 calendar days upon the closure of the reporting month - Bylaws 8.04(b)	45 calendar days upon the closure of the reporting month – Operations Agreement 6.02
ANNUAL AUDIT	NA	JANUARY 28	JANUARY 28
ANNUAL REPORT	JANUARY 28	JANUARY 28	JANUARY 28
ANNUAL BUSINESS PLAN	DRAFT PRESENTED AT SECOND BOARD MEETING OF THE CALENDAR YEAR	DRAFT PRESENTED AT SECOND BOARD MEETING OF THE CALENDAR YEAR	DRAFT PRESENTED AT SECOND BOARD MEETING OF THE CALENDAR YEAR
ANNUAL BUDGET	JUNE 3	JULY 3	JULY 3

Attachment #2

BYLAWS OF THE
BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY, INC.

A Texas Local Government Corporation created on behalf of
the Cities of Bryan and College Station, Texas

ARTICLE I
Corporate Purpose and Agency

1.01 *Purpose.* Brazos Valley Solid Waste Management Agency, Inc. (the "Corporation") is organized for the purpose of auditing, assisting, and acting on behalf of the City of Bryan, Texas, and the City of College Station, Texas, (the "Cities") in the performance of their governmental functions to promote the common good and general welfare of the Cities, including, without limitation, the financing, construction, ownership, and operation of the existing and future municipal solid waste landfills and the existing compost facility (collectively the "Facilities") on behalf of the Cities, and to perform such other governmental purposes of the Cities, including, without limitation, the collection, handling, transportation, storage, processing, and disposal of solid waste, as may be determined from time to time by the City Councils of the Cities (the "City Councils"). Subject to applicable state law and any contractual obligations of a City or the Corporation, a City or the Cities may discontinue participation in the activities of the Corporation, or a non-participating unit of local government, business, or individuals may join in the activities of the Corporation, under procedures established in the Bylaws of the Corporation (the "Bylaws").

1.02 *Local Government Corporation*. The Corporation is formed pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the "Act"), as it now or may hereafter be amended, and Chapter 394, Texas Local Government Code, which authorizes the Corporation to assist and act on behalf of the Cities and to engage in activities in the furtherance of the purposes for its creation.

1.03 *Non-Profit Corporation*. The Corporation shall have and exercise all of the rights, powers, privileges, and functions given by the general laws of Texas to non-profit corporations incorporated under the Act including, without limitation, the Texas Non-Profit Corporation Act, as amended (Tex. Rev. Civ. Stat. art. 1396-1.01, et.seq., as amended) and/or the Texas Nonprofit Corporation Law (Tex. Bus. Org. Code, Chapters 20 and 21 and the provisions of Title I to the extent applicable to non-profit corporations, as amended), whichever is applicable or their successor.

1.04 *Powers of Non-Profit Corporation*. The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created; provided, however, that the Corporation shall not issue

any bond, certificate, note or other obligation evidenced by an instrument without the written consent of each of the Cities or as otherwise allowed by the Bylaws.

1.05 *Governmental Entity for Immunity*. The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (2), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Section 101.001 et seq., Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time.

1.06 *City Consent*. References herein to the consent or written consent of a City shall refer to an ordinance, resolution or order of the governing body of the City.

ARTICLE II
Board of Directors

2.01 *Powers Vested in Board*. All powers of the Corporation shall be vested in a Board of Directors consisting of seven (7) members (the "Board") subject to the oversight of the Cities and as otherwise provided in these Bylaws. The Board shall independently manage and operate the Facilities in accordance with all applicable laws and documents, including the Articles of Incorporation of the Corporation (the "Articles"), these Bylaws, the Operations Agreement (as defined herein), the Asset Transfer and Debt Reimbursement Agreement (as defined in the Interlocal Agreement by and between the Cities dated January 14, 2009 (the "ILA")), and such other documents agreed to by the Cities and as the same may be amended from time to time. The qualification, selection, terms, removal, replacement, and resignation of the members of the Board of Directors of the Corporation ("Director" or "Directors") shall be governed by Article VI of the Articles.

2.02 *Staggered Terms of the Directors and Transition*. In accordance with Section 6.07 of the Articles, these Bylaws set forth the process and procedure for causing the staggered terms of the Directors. Except as provided herein or in the Articles, the term of each Director shall be three (3) years. To provide for staggered terms, the following procedure shall be followed in order to create three tranches of staggered terms. Presently, four (4) Directors have terms expiring on September 30, 2014, two (2) which have been appointed by each City. Upon the expiration of the terms of the Directors whose terms expire on September 30, 2014, each City shall appoint one (1) succeeding Director to serve for a one (1) year period, expiring on September 30, 2015, with the other succeeding Director to serve a for a full three (3) year term, expiring on September 30, 2017. Upon the expiration of the term of the Directors on September 30, 2015, each City shall appoint a succeeding Director to serve for a full three (3) year term thereafter. The effect of the above is that each City shall have the term of one (1) Director expire every year, with the term of the seventh (7th) Director appointed by the Cities, as set forth in the Articles, expiring every third (3rd) year. Except as set forth herein, upon the expiration of the terms of office of a Director, the subsequent Director

shall be appointed for a three (3) year term or until his or her successor is appointed by the entity authorized to appoint the Director; provided, however, upon the death, resignation or removal of a Director, the entity responsible for that Director's appointment shall appoint a replacement Director to serve for the unexpired term of office of the replaced Director.

2.03 *Governing Documents*. All other matters pertaining to the internal affairs of the Corporation shall be governed by these Bylaws, so long as these Bylaws are not inconsistent with the Articles, the Operation Agreement (as defined herein), the Asset Transfer and Debt Reimbursement Agreement (as defined in the ILA), and such other documents agreed to by the Cities and as the same may be amended from time to time, or the laws of the State of Texas.

2.04 *Voting Rights*. All Directors shall have full and equal voting rights. All references herein to an act, resolution or vote of the Directors shall refer to a vote of the Directors entitled to vote on the matter as provided herein.

2.05 *Meetings of Directors*. The Directors may hold their meetings and may have an office and keep the books of the Corporation at such place or places within Brazos County, Texas, or Grimes County, Texas, as the Board may from time to time determine; provided, however, in the absence of any such determination, such place shall be the registered office of the Corporation in the State of Texas. The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required under Chapter 551, Texas Government Code (the "Open Meetings Act"); provided that the notice of each meeting of the Board shall be posted on the official bulletin board designated by the Cities for the posting of meetings of the Cities' respective City Councils. The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552, Texas Government Code (the "Public Information Act").

2.06 *Annual Meetings*. The annual meeting of the Board shall be held at the time and at the location in Brazos County, Texas, or Grimes County, Texas, designated by the resolution of the Board for the purposes of transacting such business as may be brought before the meeting.

2.07 *Regular Meetings*. Regular meetings of the Board shall be held at least quarterly, at such times and places as shall be designated from time to time by resolution of the Board.

2.08 *Special and Emergency Meetings*. Special and emergency meetings of the Board shall be held whenever called by the Chairman of the Board, the Secretary, or by a majority of the Directors who are serving duly appointed terms of office at the time the meeting is called. A majority of the Board, or a quorum, with at least two (2) Board members appointed by each City, must be present for any special called meeting. A majority of the Board or a quorum, with at least one (1) Board member appointed by each City, must be present for any emergency called meeting. The Secretary shall give notice

of each special meeting in person, by telephone, facsimile, mail or email at least three (3) days before the meeting to each Director and to the public in compliance with the Open Meetings Act. Notice of each emergency meeting shall also be given in the manner required under the Open Meetings Act. An emergency meeting may only be held when there is an emergency or an urgent public necessity exists and immediate action is required of the Board because of an imminent threat to public health and safety, or a reasonably unforeseeable situation. The agenda notice of the emergency meeting must be posted at least two (2) hours before the meeting and clearly identify the emergency or urgent public necessity. The Chairman, or the Board member who calls an emergency meeting must notify by telephone, facsimile transmission, or electronic mail not later than one (1) hour before the meeting those members of the news media that have previously filed at the Corporation a request containing all pertinent information for the special notice and has agreed to reimburse the Board for the cost of providing the special notice. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special meeting. At any meeting at which every Director shall be present, even though without any notice, any matter pertaining to the purposes of the Corporation may be considered and acted upon to the extent allowed by the Open Meetings Act.

2.09 *Quorum*. Except as otherwise set forth in Section 2.08 of these Bylaws, a majority of the entire Board (four) shall constitute a quorum for the consideration of matters pertaining to the Corporation. If at any meeting of the Board there is less than a quorum present, a majority of those present may adjourn the meeting. The act of a majority of the Directors present and voting at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law, by the Articles, or by these Bylaws.

2.10 *Assent Presumed Without Express Abstention or Dissent*. A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action unless such person's dissent or abstention shall be entered in the minutes of the meeting or unless such person shall file written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof. Such right to dissent or abstain shall not apply to a Director who voted in favor of the action.

2.11 *Conduct of Business*. At the meetings of the Board, matters pertaining to the purpose of the Corporation shall be considered in such order as the Board may from time to time determine. At all meetings of the Board, the Chairman shall preside, and in the absence of the Chairman, the Vice-Chairman shall preside. In the absence of the Chairman and the Vice-Chairman, an acting Chairman shall be chosen by the Board from among the Directors present. The Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.

2.12 *Executive Committee; Other Committees*. The Board may, by resolution passed by a majority of the entire Board, designate two (2) or more Directors to constitute

an executive committee or other type of committee. In addition, the Board may appoint members of Corporation staff and citizens of the Cities to be members of a committee, except for an Audit, Compensation, or Governance Committee, which committees may only be composed of Directors.

2.13 *Power of Committees*. To the extent provided in the authorizing resolution for the committee and the Board-approved committee charter, a committee may not exercise the authority of the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings, shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall report the same to the Board from time to time. Committees authorized to exercise the powers of the Board shall give notice of any meeting in the manner required for a meeting of the Board. Committees are subject to the regulations which apply to committees of government entities including the Public Information Act and Open Meetings Act.

2.14 *Compensation of Directors*. Directors, as such, shall not receive any salary or compensation for their services as Directors, except the seventh (7th) Director appointed by the Board may receive such compensation as determined by the other Board members; provided, however, Directors may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes.

2.15 *Technical Advisory Committee*. The Board shall establish a Technical Advisory Committee composed of members who are, in the judgment of the Board, qualified to provide advice with respect to the activities of the Corporation. The size of the Technical Advisory Committee will be determined by the Board and may be adjusted from time to time; provided, however, the Technical Advisory Committee shall in no case have fewer than four (4) members, with two (2) members appointed by the Bryan City Manager and two (2) members appointed by the College Station City Manager. The Board will designate one or more of its Directors to be a liaison to the Technical Advisory Committee to assure close communication between the Board and the Technical Advisory Committee. Directors shall not be eligible to be members of the Technical Advisory Committee.

Members of the Technical Advisory Committee appointed by a City Manager shall serve at the pleasure of such City Manager. Members of the Technical Advisory Committee shall not receive any salary or compensation for their services; provided, however, they may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes with prior approval of the Board.

The Technical Advisory Committee shall meet as needed to review the Annual Budget, construction contracts and other non-routine business that may require consideration by the Board of Directors.

The officers and Directors of the Corporation may consult with the Technical Advisory Committee from time to time with respect to the activities of the Corporation, but the Technical Advisory Committee shall in no way exercise or restrict the powers of

the Board nor limit its responsibility for the management of the affairs of the Corporation. The members of the Technical Advisory Committee may meet to discuss Corporation-related activities and to advise the Board and Executive Director thereon. Based upon the individual areas of professional expertise, members of the Technical Advisory Committee may provide skilled analysis and comments regarding proposed Corporation plans and programs.

2.16 *Investment Advisory Committee*. The Board shall establish an Investment Advisory Committee composed of members who are, in the judgment of the Board, qualified to provide advice with respect to the investment activities of the Corporation and compliance with the Public Funds Investment Act (PFIA). The Investment Advisory Committee shall consist of one (1) member appointed by the Bryan City Manager and (1) member appointed by the College Station City Manager. The Board will designate one or more of its Directors to be a liaison to the Investment Advisory Committee to assure close communication between the Board and the Investment Advisory Committee. Directors shall not be eligible to be members of the Investment Advisory Committee.

Members of the Investment Advisory Committee shall serve at the pleasure of the respective City Managers. Members of the Investment Advisory Committee shall not receive any salary or compensation for their services; provided, however, they may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes with prior approval of the Board.

The officers and Directors of the Corporation may consult with the Investment Advisory Committee from time to time with respect to the activities of the Corporation, but the Investment Advisory Committee shall in no way exercise or restrict the powers of the Board nor limit its responsibility for the management of the affairs of the Corporation. The members of the Investment Advisory Committee may meet to discuss BVSWMA related activities and to advise the Board thereon. Based upon the individual areas of professional expertise, members of the Investment Advisory Committee may provide skilled analysis and comments regarding BVSWMA investments and compliance with the Public Funds Investment Act and the Investment Policy of the Corporation.

2.17 *Director Reliance on Consultant Information*. A Director shall not be liable if, while acting in good faith and with ordinary care, such Director relies on information, opinions, reports or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

(a) one or more other officers or employees of the Corporation;

(b) an employee of a City;

(c) legal counsel, public accountants, or other persons as to matters the Director reasonably believes are within the person's professional or expert competence; or,

(d) a committee of the Board of which the Director is not a member.

2.18 *Executive Director*. The Board is authorized to hire an Executive Director who shall serve at the pleasure of the Board. The Executive Director shall be the chief executive officer of the Corporation and shall have the duties and powers as set forth in Article VI of these Bylaws. The Board shall establish the compensation, and may establish duties and responsibilities of the Executive Director in addition to those prescribed by Article VI of these Bylaws. The hiring and/or removal of the Executive Director shall be by a majority vote of the entire Board.

2.19 *Attorneys and Consultants*. The Board may employ attorneys, auditors, certified accountants, and such other professionals and consultants as may be required for the purposes of the Corporation from time to time.

ARTICLE III
Officers

3.01 *Titles and Term of Office*. The officers of the Corporation shall consist of a Chairman and a Secretary and may also consist of one or more Vice-Chairmans, a Treasurer, and such other officers and assistant officers as may be deemed necessary. New offices may be created and filled at any meeting of the Board. Each officer shall be a current Director. One person may hold more than one office, except the Chairman shall not hold the office of Secretary. The term of office for each officer shall be two (2) years, except that such office shall terminate on the earlier of: (a) the date that the officer is replaced by the Board; or (b) the date that the officer is no longer a member of the Board.

Notwithstanding the foregoing, the office of the Chairman shall rotate between a members of the Board from each City in alternating two (2) year intervals.

All officers shall be appointed and subject to removal at anytime, with or without cause, by a vote of a majority of the entire Board.

A vacancy in any office elected pursuant to this Article III shall be filled by a vote of a majority of the entire Board and such elected officer shall serve for the balance of the remaining term of the immediately former officer; provided, however, in the event of the vacancy of the Chairman, a subsequent Chairman must be from the same City as the immediately former Chairman.

3.02 *Powers and Duties of the Chairman*. The Chairman shall be a member of the Board and shall preside at all meetings of the Board. Such person shall have such duties as are assigned by the Board. The Chairman may call special or emergency meetings of the Board. Any special or emergency called meeting shall be called and conducted in accordance with Section 2.08 of these Bylaws. In furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles, the Chairman or Vice-Chairman may sign and execute all bonds, notes, deeds, conveyances,

franchises, assignments, mortgages, contracts and other obligations in the name of the Corporation. The Chairman shall be an ex officio member of all committees.

3.03 *Powers and Duties of the Vice-Chairman*. A Vice-Chairman shall be a member of the Board and shall have such powers and duties as may be assigned to such person by the Board or the Chairman including the performance of the duties of the Chairman upon the death, absence, disability, or resignation of the Chairman, or upon the Chairman's inability to perform the duties of such office. Any action taken by the Vice-Chairman in the performance of the duties of the Chairman shall be conclusive evidence of the absence or inability to act of the Chairman at the time such action was taken.

3.04 *Treasurer*. The Treasurer, if any, when necessary or proper, (i) may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board; (ii) may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board; (iii) shall enter or cause to be entered regularly in the books of the Corporation to be kept by such person for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; (iv) shall perform all acts incident to the position of Treasurer subject to the control of the Board, including the monitoring and audit of all cash accounts whose existence must first be approved by the Board; and (v) shall, if required by the Board, give such bond for the faithful discharge of his or her duties in such form as the Board may require.

3.05 *Secretary*. The Secretary (i) shall keep the minutes of all meetings of the Board in books provided for that purpose; (ii) shall attend to the giving and serving of all notices; (iii) in furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles, may sign with the Chairman in the name of the Corporation and/or attest the signatures thereof, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; (iv) shall have charge of the Corporation's books, records, documents and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the Corporation during business hours; and, (v) shall in general perform all duties incident to the office of Secretary subject to the control of the Board. The Secretary shall also perform the duties of the Treasurer if no Treasurer has been appointed.

3.06 *Compensation*. Officers shall serve without compensation for their duties, but are entitled to receive reimbursement for their reasonable expenses only in performing their functions in accordance with policies adopted by the Board.

3.07 *Officer Reliance on Consultant Information*. In the discharge of a duty imposed or power conferred on an officer of the Corporation, the officer may in good

faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

(a) one or more other officers or employees of the Corporation, including members of the Board;

(b) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or,

(c) an employee of one of the Cities.

ARTICLE IV
Financial Responsibilities

4.01 *Audit*. Not later than one hundred twenty (120) days after the close of each fiscal year, the Board shall have an annual audit prepared by an independent auditor who is duly licensed or certified as a public accountant in the State of Texas of the financial books and records of the Corporation. Upon receiving the completed audit, the Corporation shall immediately provide a copy to each City.

4.02 *Capital Spending Authority*. The Board may expend funds for capital improvements for the Facilities in accordance with the capital plan approved by the Board for the current fiscal year budget as follows:

(a) Funds from a City shall be used for the purposes of the Corporation as authorized and directed by the Cities.

(b) Funds from other sources, such as donations, may be used at the discretion of the Board for capital purposes as long as the uses are consistent with the Cities' direction and are not reasonably expected by the Board to increase the operation and maintenance costs of the Corporation above the limits established in Section 4.04, below or have a capital cost greater than $100,000.

(c) For expansion of the Facilities beyond the size, function and scope existing at the time of the formation of the Corporation with the prior approval of the Cities.

(d) Proceeds of bonds, notes and other obligations shall be expended in accordance with the terms of the resolution authorizing the issuance of such bonds, notes or other obligations.

4.03 *Issuance of Debt*.

(a) The Corporation, with the approval of the Cities, is authorized to issue short-term debt in the form of bonds, notes, and other obligations which by their terms mature and are payable not later than one (1) year from their initial date of issuance. Where possible, the amount and purpose of the short term debt shall be projected by the Corporation in its annual budget to the Cities. Cities shall be given the first opportunity to provide these funds before the Board incurs debt.

(b) The Corporation, with the approval of the Cities, is authorized to issue long-term debt in the form of bonds, notes, and other obligations which by their terms mature and are payable beyond one (1) year from their initial date of issuance. Long term debt may be issued to finance capital improvements and costs related thereto, and to refund or refinance any outstanding bonds, notes, or obligations issued or incurred by the Corporation, or such for such other reasons as maybe approved by the Cities.

(c) Short-term debt as defined in Subsection (a) and long-term debt as defined in Subsection (b) of this Section 4.03 may be issued only if:

I. the issuance of said debt is approved by a majority of the entire Board;

II. at least one (1) Director appointed by each of the Cities are among the majority of the Board voting in favor of issuance of the debt; and,

III. the issuance of said debt is approved by resolution or ordinance of the Cities.

(d) Any debt issuance approved by the Cities shall be paid from any source or sources permitted by law, including the income and revenue of the Corporation.

4.04 *Financially Material Event*. A Financially Material Event is defined as a projected discrepancy from the budgeted amount of ten percent (10%) or more (i) decrease of annual revenue, (ii) increase of O&M expenses (including those resulting from changes in state or federal law or regulation), (iii) a combination of decreased annual revenue and increased O&M expenses, or (iv) increase in capital expenses. In the event of a Financially Material Event, the Board or either City may request a revised Annual Budget including the Financially Material Event. The Board shall approve or reject the revised Annual Budget within thirty (30) days after the revised Annual Budget has been submitted for approval; provided, that the failure of the Board to reject the

request on or before the thirtieth (30th) day after submission shall be deemed an approval of the request.

4.05 *Fiscal Year*. The fiscal year of the Corporation shall begin October 1 of each year.

4.06 *Annual Budget*. No later than ninety (90) days prior to the beginning of each fiscal year, the Board shall prepare, or cause to be prepared, and approve a budget (the "Budget") for each fiscal year. The Budget must be approved by a two-thirds (2/3) majority vote of the entire Board. After approval by the Board, the Budget shall be submitted to each City for approval. Failure of a City to reject the Budget approved by the Board on or before the thirtieth (30th) day after submission to the Cities shall be deemed an approval of the Budget.

The Executive Director shall submit a draft of the proposed Annual Budget to the Technical Advisory Committee prior to thirty (30) days before the Annual Budget is submitted for approval by the Board.

If the Board fails to approve the Budget, or if the Budget is not approved by each City, then the next year's Budget is the greater of: the total amount of the prior year's Budget; or, the average of the annual Budgets for the prior three (3) years.

4.07 *Line Item Flexibility*. The Executive Director has the authority to shift operation and maintenance funds from one line item of the Budget to another without the approval of the Board or the Cities. The Board has the authority to shift operation and maintenance funds from one line item of the Budget to another without the approval of the Cities.

4.08 *Reserve Fund*. The Budget shall provide for one (1) or more reserve funds for the replacement of scheduled assets, for capital improvements for the Facilities, reasonable reserves for future activities, debt, establishment of a capital reserve, establishment of a reserve for closure and post-closure liability and satisfaction of other legal obligations of the Corporation. Any unencumbered funds remaining at the end of the fiscal year shall be converted to the Reserve Fund. The amount of the Reserve Fund shall be in an amount customary for facilities comparable to the Facilities in both size and use.

4.09 *Other Funds*. Other funds, such as unrestricted charitable donations, may be used by the Board in accordance with the approved budget or, if not anticipated in the Budget, as the Board directs, provided that the limitation set out in Section 4.04, above or a capital cost of $100,000 is not exceeded.

4.10 *Appropriations and Grants*. The Corporation shall have the power to request and accept any appropriations, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision, or municipality in the State, or from any other source.

4.11 *Sale or Transfer of Assets*. The Corporation may not sell, transfer or assign real property or permits of the Corporation, in whole or in part, without the approval of a two-thirds (2/3) majority vote of the entire Board. After approval by the Board, the proposed sale, transfer or assignment of the Assets, the proposed asset transfer ("Asset Transfer") shall be submitted to each City for approval. The Cities will approve or disapprove the Asset Transfer in whole or in part. Failure of the Cities to reject the Asset Transfer approved by the Board on or before the thirtieth (30th) day after submission to the Cities shall be deemed an approval of the Asset Transfer.

4.12 *Financial Assurance*. Unless and until the Corporation can meet the Texas Commission on Environmental Quality ("TCEQ") local government financial test for closure/post-closure obligations, the Cities shall each provide documentation sufficient to provide fifty percent (50%) of the total financial assurance obligation of the Corporation. The Corporation shall reimburse the Cities for costs incurred for the preparation of any such submittal to the TCEQ. During the operating life of the facility, the Corporation shall develop reserve funds sufficient for closure costs and post-closure maintenance costs of the facility.

ARTICLE V
Indemnification of Directors and Officers

5.01 *Right to Indemnification*. Subject to the limitations and conditions as provided in this Article V and the Articles, each person who was or is made a party, is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "proceeding"), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Corporation to the fullest extent permitted by the Texas Non-Profit Corporation Act and/or the Texas Nonprofit Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlement and reasonable expenses (including without limitation, attorneys' fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article V shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnify hereunder. The rights granted pursuant to this Article V shall be deemed contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such

amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

5.02 *Advance Payment*. The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Corporation for the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 5.01 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article V or otherwise.

5.03 *Indemnification of Employees and Agents*. The Corporation, by adoption of a resolution of the Board, may indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; and the Corporation may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Corporation but who are or were serving at the request of the Corporation as a Director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article V.

5.04 *Appearance as a Witness.* Notwithstanding any other provision of this Article V, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

5.05 *Non-exclusivity of Rights*. The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 5.03 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Articles or these Bylaws, agreement or disinterested Directors or otherwise.

5.06 *Insurance*. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer,

employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article V.

5.07 *Notification*. Any indemnification of or advance of expenses to a Director or officer in accordance with this Article V shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the ninety (90) day period immediately following the date of the indemnification or advance notification.

5.08 *Savings Clause*. If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer, or any other person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VI
Executive Director; Employees

6.01 *Powers and Duties of the Executive Director*.

(a) *Chief Executive*. The Executive Director shall be the chief executive officer of the Corporation and, subject to the control of the Board, he or she shall be in general charge of the Facilities and the properties and affairs of the Corporation. The Executive Director has management and control of the Facilities, the properties and operations of the Corporation, including the powers of a general manager. The Executive Director shall be an ex-officio member of all Board committees, except the Audit Committee. The Executive Director will be responsible for implementing all orders and resolutions of the Board, and all other powers that are not specifically reserved to the Directors or Cities, will be executed by the Executive Director within the general guidelines and policies of the Board and Cities.

(b) *Responsible for Hiring and Supervision of Employees*. The Executive Director shall be responsible for hiring and terminating the employees of the Corporation. All employees hired by the Executive Director shall be terminable at-will and not be provided any term or promise of employment.

(c) *Spending Authority*. The Executive Director is authorized to approve all contracts and expenditures that are not greater than $50,000 without Board approval, as long as funds are budgeted and are available for such expenditure.

(d) *Annual Budget*. The Executive Director is responsible for the preparation of the Corporation's annual budget.

(e) *Annual Business Plan*. The Executive Director shall prepare a Corporation business plan (the "Business Plan") on an annual basis for review and approval by the Board. The Business Plan shall include such items and matters required by the Board and, at a minimum, shall include all requirements set forth in Section 6.01 of the Amended and Restated Solid Waste Operations Agreement approved by the Corporation and the Cities ("Operations Agreement").

6.02 *Corporation Employees*.

(a) The Executive Director shall be a full time employment position of the Corporation.

(b) Any other employees of the Corporation (other than the Executive Director) shall be employees of the Corporation hired by the Executive Director.

ARTICLE VII
Code of Ethics

7.01 *Policy and Purposes*.

(a) It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

(b) This Code of Ethics has been adopted as part of the Corporation's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers;

and (b) to establish guidelines for such ethical standards of conduct.

7.02 *Conflicts of Interest.*

(a) *Abide by State and Criminal Laws for Public Officers*. All Directors, officers and employees shall abide by the state civil and criminal laws regarding conflict of interest, official misconduct and other regulations and restrictions involving their official duties.

(b) *Disclosure and Abstention*. It is the intent of these Bylaws, that the Directors, Executive Director and officers shall take all steps to avoid the appearance of impropriety in the conduct of their affairs on behalf of the Corporation. This includes not engaging in any conduct or business that may be deemed to compromise their independent judgment in executing their duties as Corporation officials. In the event that a Director, officer or the Executive Director has any financial or equitable interest, direct or indirect, in a transaction that comes before the Board, or a committee or the Executive Director, the affected Director or officer, must:

I. disclose that interest in writing and file it with the Board Secretary; and

II. refrain from discussing or voting on the same.

(c) *Restrictions on Executive Director*. The Executive Director is precluded from having any financial or equitable interest in any contract, service (other than such person's employment) or acquisition that is subject to such person's approval or that the subordinates of the Executive Director may approve or monitor.

(d) *Definition of Financial Interest/Relative*. The financial interest contemplated under (b) and (c) of this Section requires that the affected person who is the Director, officer, or Executive Director or their relative receive an actual financial benefit from the transaction with the Corporation. A relative is a person related within the first degree of consanguinity or affinity to the Director, officer, or Executive Director. A financial or equitable interest does not include the following:

i. An ownership in the entity transacting business with the Corporation where the ownership interest is less than one percent (1%).

ii. Compensation as an employee, officer or director of the entity transacting business with the Corporation where such compensation is not affected by the entity's transaction with the Corporation.

iii. An investment or ownership in a publicly held company in an amount less than TEN THOUSAND DOLLARS ($10,000.00).

iv. An employee of a public entity serving on the Board.

7.03 *Acceptance of Gifts*. No Director or officer shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or officer shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the Director's or officer's discretion. As used here, "benefit" does not include:

(a) a fee prescribed by law to be received by a Director or officer or any other benefit to which the Director or officer is lawfully entitled or for which he gives legitimate consideration in capacity other than as a Director or officer;

(b) a gift or other benefit conferred on an account of kinship or a personal, professional, or business relationship independent of the official status of the Director or officer;

(c) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

1) not more than one honorarium is received from the same person in a calendar year;

2) not more than one honorarium is received for the same service; and

3) the value of the honorarium does not exceed $250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or officer in performance of the services.

(d) A benefit consisting of food, lodging, transportation, or entertainment accepted as a guest is reported as may be required by law.

7.04 *Nepotism*. No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree of consanguinity to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty at least thirty (30) days prior to the appointment of the Director or officer so appointing or voting.

ARTICLE VIII
Miscellaneous Provisions

8.01 *Seal*. The seal of the Corporation shall be such as may be from time to time approved by the Board. The seal of the Corporation shall not be required to be placed on a document in order for the document to be considered a valid act or agreement of the Corporation.

8.02 *Notice and Waiver of Notice*. Whenever any notice, other than public notice of a meeting given to comply with the Open Meetings Act, is required to be given under the provisions of these Bylaws, such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. If transmitted by facsimile or email such notice shall be deemed to be delivered upon successful transmission of the facsimile or email. A Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting unless such attendance is for the purpose of objecting to the failure of notice. A waiver of notice signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

8.03 *Gender*. References herein to the masculine gender shall also refer to the feminine in all appropriate cases and vice versa.

8.04 *Reports*.

(a) No later than thirty (30) days following the receipt of the final Annual Audit, the Board shall submit an Annual Report to each City.

(b) No later than forty-five (45) days after the end of each month, the Executive Director shall provide a monthly operational and financial report to the Board and the Technical Advisory Committee, inclusive of a report of all contracts entered into and expenditures made by the Executive Director on behalf of the

Corporation pursuant to authority of Section 6.01 (c) of these Bylaws.

8.05 *Distribution of Net Income; Return of Funds*. Notwithstanding Section 431.107 of the Act entitling the Cities at all times to have the right to equally receive the income earned by the Corporation, any income earned by the Corporation after payment of reasonable expenses, reasonable reserves for future activities, debt establishment of a capital reserve, establishment of a reserve for closure and post-closure liability, and satisfaction of other legal obligations of the Corporation shall be retained by the Corporation and applied equitably as a credit to the charges to Cities for tipping fees and other fees and costs charged to Cities for the disposal of municipal solid waste at the Corporation's facilities and/or other services provided by the Corporation to the Cities.

8.06 *City Access to Records of Corporation*. Notwithstanding the provisions of the Public Information Act or any exceptions contained therein to disclosure and the rights or limitations thereof regarding the review of records of Texas non-profit corporations, the Cities shall have a special right to review and obtain copies of the records of the Corporation, regardless of format, upon reasonable notice and during regular business hours of the Corporation; provided, however, such special right of access to the Cities shall not apply to records to which law or regulation expressly prohibit disclosure to third parties that would by definition include the Cities.

8.07 *Expansion or Modification of Services*. The Corporation may not expand, reduce or modify the current municipal solid waste landfill and compost services consisting of two municipal solid waste landfills and compost facility (collectively referred to as the "BVSWMA Services") without the approval of a two-thirds (2/3) vote of the entire Board. The Executive Director shall present proposed expansions or modifications of service to the Technical Advisory Committee and record comments and suggestions to such proposals prior to presentation to the Board. After approval by the Board, the proposed expansion, reduction or modification of the BVSWMA Services as the case may be the proposed expansion, reduction or modification (the "BVSWMA Services Modification") shall be submitted to each City for approval. Failure of a City to reject the BVSWMA Services Modification approved by the Board on or before the thirtieth (30th) day after submission to such City shall be deemed an approval of the BVSWMA Services Modification. The Cities may approve or disapprove the BVSWMA Services Modification in whole or in part. Failure of a City to reject any portion of the BVSWMA Services Modification within the thirty (30) day period shall be deemed an approval of such portion of the BVSWMA Services Modification.

8.08 *Amendments*. A proposal to alter, amend or repeal these Bylaws shall be made by the affirmative vote of a majority of the entire Board at any annual or regular meeting, or at any special meeting if notice of the proposed amendment be contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by resolution of each City to be effective.

8.09 *Days*. Any reference to a number of days herein shall be determined as calendar days unless specifically identified as business days.

Attachment #3

AMENDED AND RESTATED

SOLID WASTE FACILITIES OPERATIONS AGREEMENT

AMONG

THE CITY OF BRYAN, TEXAS,

THE CITY OF COLLEGE STATION, TEXAS, AND

BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY, INC.

STATE OF TEXAS §
§
COUNTY OF BRAZOS §

AMENDED AND RESTATED
SOLID WASTE FACILITIES OPERATIONS AGREEMENT

THIS **AMENDED AND RESTATED SOLID WASTE FACILITIES OPERATIONS AGREEMENT** (this "Agreement" or "Operations Agreement") is dated and entered into as of _____, ~~2010~~2013, by and among the Brazos Valley Solid Waste Management Agency, Inc. ("the Agency" or "BVSWMA"), a Texas non-profit corporation created pursuant to Subchapter D of Chapter 431, Texas Transportation Code, as amended ("Chapter 431") and Chapter 394, Texas Local Government Code ("Chapter 394" and together with Chapter 431, the "Act"), the City of Bryan, Texas ("Bryan"), and the City of College Station, Texas ("College Station"), each a Texas home rule municipality (Bryan and College Station, individually, a "City" and collectively, the "Cities").

RECITALS

~~**WHEREAS,** the Cities previously entered into that certain *BVSWMA Joint Solid Waste Management Agreement* dated May 9, 1990, as amended by that certain BVSWMA First Amended Joint Solid Waste Management Agreement dated May 3, 2000, and as further amended by that certain BVSWMA First Supplement to Joint Solid Waste Management Agreement dated May 29, 2003, ("collectively referred to as the "BVSWMA Agreement") relating to the joint use and operation of certain solid waste collection and disposal assets and landfill facilities of the Cities by a regional solid waste agency known as the Brazos Valley Solid Waste Management Agency ("BVSWMA"); and~~

WHEREAS, the Cities and the Agency previously entered into that certain Solid Waste Facilities Operations Agreement dated _____, 2010; and

WHEREAS, the Cities ~~have jointly operated BVSWMA as undivided one-half (1/2) interest owners pursuant to the BVSWMA Agreement; and~~

~~**WHEREAS,** pursuant to that certain Interlocal Cooperation Agreement dated January 14, 2010 ("the ILA"), the Cities have jointly created~~ and the Agency ~~for the purpose of auditing, assisting, and acting on behalf of the Cities in the performance of their governmental functions to promote the common good and general welfare of the Cities, including, without limitation, the financing, construction, ownership, and operation of the existing and future municipal solid waste landfills and the existing compost facility (collectively the "Facilities") on behalf of the Cities, and to perform such other governmental purposes of the Cities, including, without limitation, the collection, handling, transportation, storage, processing, and disposal of municipal solid waste, as may be determined from time to time by the City Councils of the Cities (the "City Councils"); and~~desire to amend and restate the Agreement.

~~**WHEREAS,** pursuant to the ILA, the Parties are negotiating an Asset Transfer and Debt Reimbursement Agreement pursuant to which the Cities will transfer to the Agency certain real and personal property originally contributed by the Cities to BVSWMA pursuant to the~~

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~~BVSWMA Agreement along with other assets of either City identified in the Asset Transfer, which assets shall be used and operated pursuant to the provisions of this Agreement, the Agency's governing documents, and/or other appropriate agreements relating to the financing, construction, ownership, management and operation of said assets; and~~

~~**WHEREAS**, the Cities presently own, operate, and maintain their solid waste disposal system for collecting, transporting, and disposing of MSW located within the incorporated limits of the Cities and have adopted an ordinance providing for them to be the sole provider of all solid waste collection and disposal within their respective city limits effective, subject to any legal limitations, and~~

~~**WHEREAS**, the Cities and the Agency recognize that:~~

~~(a) the Agency will use the payments to be received under this and similar agreements, together with payments received from other persons for their use of the Facilities, for the payment of Operation and Maintenance Expenses of the Facilities and for the payment of the principal of, redemption premium, if any, and interest on the Agency's Bonds, if any, and to establish and maintain debt service reserves and other funds, and to pay all obligations with respect to any Credit Agreement, if and as provided in any Bond Resolution; and that the revenues under this Agreement and other such agreement and other sources will be pledged to such purposes; and~~

~~(b) that, subject to approval of the Cities as set forth in the Bylaws, the Agency may issue Bonds from time to time in the future to acquire, construct, extend, enlarge, improve, and/or repair the Facilities;~~

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, Bryan, College Station, and the Agency agree as follows:

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ARTICLE I
DEFINITIONS

1.01. DEFINITIONS AND INTERPRETATIONS. In addition to the definitions stated in the preamble hereof, the following words and phrases as used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

"Additional Entity" or "Additional Entities" means any city or cities in addition to Bryan and College Station, or any county or other political subdivision with which the Agency may enter into a contract pursuant to this Agreement, following consent by Bryan and College Station to the addition of each such Additional City, for receiving, treating, and disposing of MSW through the Facilities.

"Additional Facilities" means any improvements, enlargements, or additions to the Initial Facilities and any extensions, repairs, or replacements of the Initial Facilities of Facilities acquired, constructed, used, operated, or otherwise incorporated into or made part of the Facilities in the future by the Agency, including, but not limited to, transfer stations.

"Agreement" or "Operations Agreement" means this Agreement and any similar agreements executed between the Agency and Additional Cities with respect to the Facility.

"Annual Expense Budget" means the total amount of money required for the Agency to pay (1) all Operation and Maintenance Expense of the Facilities, (2) the principal of, redemption premium, if any, and interest on its Bonds, (3) any amounts required to be deposited in any special or reserve funds, including any debt service reserve fund, repair and replacement fund, and/or any post-closure maintenance fund, (4) all obligations with respect to any Credit Agreement, and all other amounts as required to be established, maintained and/or paid by the provisions of any Bond Resolution, (5) any Debt Reimbursement payable to the Cities, and (6) any amounts due and payable to Grimes County, Texas, pursuant to the Grimes County Agreement.

"Articles" means the Articles of Incorporation or Certificate of Formation of the Agency on file with the Texas Secretary of State, and shall include all amendments thereto and restatements thereof.

"Board" means the Board of Directors of the Agency.

"Bond Resolution" means any resolution of the Board of Directors of the Agency authorizing the issuance of Bonds and providing for their security and payment, as such resolution(s) may be (i) amended from time to time as therein permitted and (ii) the substance and form of which is approved by the Cities.

"Bonds" means any bonds, notes, or other obligations to be issued or entered into by the Agency pursuant to this Agreement and the Governing Documents and similar agreements with Additional Cities for the acquisition, construction, enlargement, improvement, extension, repair, replacement, or closure of the Facilities or any part thereof, whether in one or several issues, or any obligations issued by the Agency to refund any or all of same.

~~"Borrowed Employee Agreement" has the meaning assigned to said term in the Asset Transfer Agreement.~~

"Bryan Assets" has the meaning assigned to said term in the Asset Transfer Agreement.

"Bryan Debt" means proceeds obtained from the sale of bonds, certificates of obligation, or other debt instruments that were used by Bryan to construct, purchase, operate, repair, or maintain ~~BVSMWA~~BVSWMA Assets or Bryan Assets.

"~~BVSMWA~~BVSWMA Assets" has the meaning assigned to said term in the Asset Transfer Agreement.

"Bylaws" means the Bylaws of the Agency and all amendments thereto.

"College Station Assets" has the meaning assigned to said term in the Asset Transfer Agreement.

"College Station Debt" means proceeds obtained from the sale of bonds, certificates of obligation, or other debt instruments that were used by College Station to construct, purchase, operate, repair, or maintain BVSWMA Assets or College Station Assets.

"Credit Agreement" means any credit agreement, as defined in Chapter 1371, Texas Government Code, which the Agency enters into relating to its obligations with respect to the Bonds, the substance and form of which is approved by the Cities; provided, however, for purposes of this Agreement, "Credit Agreement" shall not include Interest Rate Management Agreements as defined in Chapter 1371, Texas Government Code.

"Estimated Contributing Weight" shall mean the Agency's estimated weight of the total MSW to be delivered to all Points of Delivery for an upcoming Fiscal Year as determined by historical usage and reasonable anticipated growth based on Prudent Utility Practice.

"Facilities" mean the Initial Facilities, together with all Additional Facilities, including all real and personal property, acquired or constructed with proceeds from the sale of Agency's Bonds, if any, or payments made to the Agency by the Cities or other Persons made available to the Agency by the Cities, if any, pursuant to this Agreement and all similar agreements with Additional Entities, and used or operated by the Agency for receiving, treating, and disposing of Solid Waste of and for the Cities and other Persons. "Facilities" shall include only those facilities that provide service to the Cities pursuant to this Agreement and all similar agreements with Additional Cities and other facilities which provide service to other Persons and, unless otherwise agreed to by the Agency and the Cities, does not include trucks or other equipment and facilities used for the initial local pickup or collection of Solid Waste, including specifically garbage, within the Cities and the transportation thereof to the designated Point of Delivery.

"Fiscal Year" means the twelve (12) month period beginning each October 1 and ending the following September 30, or such other twelve (12) month period as may be established in the future to constitute the Agency's Fiscal Year as approved by the Cities.

"Fiscal Year of the City" means the respective Fiscal Year of each City, which currently begins on October 1 of each year for each of Bryan and College Station, as each such fiscal year may be changed from time to time with notice to the Agency.

"Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, terrorist attacks, orders of any kind of the Government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, or any other causes not reasonably within the control of the party claiming such inability.

"Governing Documents" means, collectively, the Articles and the Bylaws.

"Grimes County Agreement" means that certain *Agreement By and Between Grimes County, Texas, the City of Bryan, Texas, and the City of College Station, Texas,* dated April 22, 2002, relating to certain matter regarding the permitting and development of the Twin Oaks Landfill including, but not limited to, the payment of a host fee to Grimes County, Texas.

"Initial Facilities" means the BVSWMA Assets, Bryan Assets, and College Station Assets conveyed to the Agency pursuant to the Asset Transfer and Debt Reimbursement Agreement, including, but not limited to, the Rock Prairie Road Landfill, the Twin Oaks Landfill and the City of Bryan Compost Facility.

"Land" means the real property to be used for the construction and operation of the Facilities, together with any improvements thereto.

"Municipal Solid Waste" (sometimes referred to hereafter as "MSW") shall have the same meaning as set forth in 30 T.A.C. §330.3, as amended from time to time by the TCEQ.

"Operation and Maintenance Expense" means all costs of operation and maintenance of the Facilities including, but not limited to:

(a) repairs and replacements to the extent funds are not held in a special fund;

(b) the cost of utilities, supervision, engineering, accounting, auditing, regulatory costs, legal services, insurance premiums, and any other supplies, services, administrative costs, and equipment necessary for proper operation and maintenance of the Facilities; and

(c) payments made for the use or operation of any property, payments of fines, and payments made by the Agency in satisfaction of judgments or other liabilities resulting from claims not covered by the Agency's insurance or not paid by one particular City arising in connection with the operation and maintenance of the Facility. Depreciation shall not be considered an item of Operation and Maintenance Expense.

"Permits" mean the licenses or permits issued or to be issued by the TCEQ with respect to operation, maintenance, and expansion of any component of the Facilities, including, but not limited to:

a. TCEQ Municipal Solid Waste Disposal Permit No. 1444C with respect to the Rock Prairie Road Landfill**;**

b. TCEQ Municipal Solid Waste Disposal Permit 2292 with respect to with respect to the State Highway 30 Landfill (also known as the Twin Oaks Landfill);

c. TCEQ Municipal Solid Waste Registration No. 42003 with respect to the City of Bryan Composting Facility.

"Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership association, or any other legal entity that is not the Cities, including, without limitation, any Additional Entity.

"Point of Delivery" means any point, as designated by the Agency, at which Solid Waste is received by the Agency from a City or from such other Persons as may be permitted to dispose of Solid Waste at the Facility pursuant to Section 5.04 of this Agreement.

"Prudent Utility Practice" means any of the practices, methods, and acts, in the exercise of reasonable judgment, in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the solid waste industry prior thereto, known at the time the decision was made, that would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. The Parties understand, acknowledge and agree that Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act at the exclusion of all others, but rather is a spectrum of possible practices, methods, or acts that could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition.

"Recyclable Material" shall have the same meaning as set forth in 30 T.A.C. §330.3, as amended from time to time by the TCEQ.

"Related Agreements" means the Asset Transfer Agreement, the Borrowed Employee Agreement, the Grimes County Agreement, the ILA, and any other agreement(s) entered by and between the Cities pursuant to or in accordance with any of the foregoing described agreements.

"Sludge" shall have the same meaning as set forth in 30 T.A.C. §330.3, as amended from time to time by the TCEQ.

"Special Waste" shall have the same meaning as set forth in 30 T.A.C. §330.3, as amended from time to time by the TCEQ.

"State" means State of Texas.

"T.A.C." means the Texas Administrative Code, as amended.

"TCEQ" means the Texas Commission on Environmental Quality or its successor agency.

"Trustee" means any trustee named under a trust indenture entered into by the Agency securing the payment of the Bonds and authorized by a Bond Resolution or any paying agent named under, and authorized by, a Bond Resolution.

1.02. INTERPRETATION. The caption headings of this Agreement are for reference purposes only and shall not affect its interpretation in any respect. Unless the context otherwise requires, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa. This Agreement and all the terms and provisions shall be liberally construed to effectuate the purpose set forth herein and to sustain the validity of this Agreement.

ARTICLE II
PROVIDING OF FACILITIES BY THE AGENCY

In order to provide services and facilities for receiving, treating, and disposing of Solid Waste for the Cities and other Persons as provided in this Agreement, the Agency will operate and maintain the Facilities, and will from time to time enlarge, improve, repair, replace, and/or extend the Facilities. In accordance with and upon the closing of the Asset Transfer Agreement, or as soon after the closing as reasonably possible, the Agency shall obtain and hold in its name all required permits and licenses from the appropriate federal and State agencies, and each City shall assist the Agency in obtaining same, and shall assign or transfer, or cause to be assigned or transferred, to the Agency any such permits for the Facilities now or hereafter held by the Cities. The Agency shall provide, manage, operate, and maintain the Facilities in such manner as it determines is necessary pursuant to Prudent Utility Practice for providing adequate, efficient, and economical service to Cities, and shall have the right to use or discontinue the use of any part of the Facilities as the Agency deems necessary.

ARTICLE III
COLLECTION OF SOLID WASTE

3.01. DELIVERY. Each City hereby agrees, to the extent it legally may, to deliver or cause to be delivered all of the Solid Waste (except Sludge, if a City so opts), attributable to and generated within the incorporated limits of each such City, and which is otherwise collected by Cities from the generator of said Solid Waste, to the Facility, subject to the recycling provisions of Section 3.06, provided such Solid Waste meets the requirements for quality as set forth in Article IV of this Agreement; but delivery of Solid Waste shall commence only after notice by the Agency that it is ready to receive the same pursuant to this Agreement.

3.02. POINT OF DELIVERY; CONVEYANCE TO POINT OF DELIVERY. Each City shall deliver or cause to be delivered all Solid Waste attributable to and generated within such City to the designated Point of Delivery for such City. Unless and until otherwise agreed by a City and the Agency, the respective Cities shall be solely responsible for (a) collecting or causing to be collected and (b) delivering or causing to be delivered all of such Solid Waste attributable to and generated within the incorporated limits of such City to the Point of Delivery.

3.03. QUANTITY AT POINT OF DELIVERY. The quantity of Solid Waste conveyed by each City to the Point of Delivery shall be measured by the Agency by weight and the total weight of Solid Waste received during each calendar month shall be used to determine each City's payments to the Agency as required by Article V.

3.04. LIABILITY FOR DAMAGES AND RESPONSIBILITY FOR DISPOSAL. Liability for damages arising from the collection, transportation and delivery of all Solid Waste delivered by each City hereunder shall remain in the respective City (the "Collecting Party") to the Point of Delivery, and after the Solid Waste is weighed at the Point of Delivery, liability for such damages shall pass to the Agency, provided the Solid Waste collected, transported and delivered is of the type and quality that the Agency is legally authorized to accept. As between the Agency and each City, for any liability related to Solid Waste, while that Solid Waste was or is in the control of such Collecting Party, each Collecting Party agrees, to the extent permitted by law, to indemnify and to save and hold the other parties harmless from any and all claims, demands, causes of action, damages, losses, costs, fines, and expenses, including reasonable attorney's fees that may arise or be asserted by anyone at any time on account of the collection, transportation, and delivery of such Solid Waste while it was or is in the control of such Collecting Party. The Agency has the responsibility as between the parties for the proper reception, transportation, treatment, and disposal of all Solid Waste received by it at Point of Delivery, subject to the other provisions of this Agreement and provided the Solid Waste received, transported, delivered, or disposed of is of the type and quality that the Agency is legally authorized to accept.

3.05. MEASUREMENT OF SOLID WASTE. The Agency will furnish, install, operate, and maintain at its own expense at each Point of Delivery the necessary equipment and devices of standard type for measuring properly the weight of all Solid Waste delivered under this Agreement. Such equipment and devices shall remain the property of the Agency. Each City shall have access to such equipment and devices at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the Agency. In accordance with Chapter 12 of Title 4 of the Texas Administrative Code, the devices will be registered annually through the Texas Department of Agriculture – Weights and Measures Program. Certificate(s) of registration will be prominently displayed within the main building(s) so as to, during regular business hours, be in plain sight of, legible to, and physically accessible to the Cities. Each City shall have access to such equipment and devices at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the Agency. Not less than four (4) times in each calendar year of operation, the Agency shall employ a licensed service/inspection company to calibrate all measurement equipment and devices. ~~Agency shall provide notice to the Cities not less than two (2) days prior to conducting the calibration in order to allow each City an opportunity to have a representative present when such reading, calibration, and/or adjustment is conducted.~~ All service reports ~~readings~~ will be entered upon proper books of record maintained by the Agency. Upon written request, any City may have access to said record books during reasonable business hours. ~~Not more than three times in each calendar year of operation, the Agency shall calibrate such measurement equipment and devices, if requested in writing by a City to do so, in the presence of a representative of the City, and the parties shall jointly observe any adjustments which are made to such equipment and devices in case any adjustment is found to be necessary. If, for any reason, any such equipment and devices are out of service or out of repair, or if, upon any test, the percentage of inaccuracy thereof is found to be in excess of five (5%) percent, registration thereof shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one half (1/2) of the time elapsed~~

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~~since the date of the last calibration, but in no event further back than a period of six (6) months. Each City may, at its option and its own expense, install and operate equipment or devices for checking the measurement equipment and devices of the Agency, but the measurements obtained from the Agency's measurement equipment and devices shall be the sole basis for determinations made in accordance with the terms of this agreement.~~

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3.06. RECYCLING. Each City may recycle Recyclable Materials and dispose of the Recyclable Materials with an entity other than the Agency until such time as the Agency enters the recycling business for the same Recyclable Materials and for the same or better price, inclusive of transportation, than the City is then receiving, at which time the City shall deliver its Recyclable Materials to the Agency, subject to any existing agreement terms and conditions. Once the Agency enters into the recycling business, the Cities may not deliver its Recyclable Materials to another entity or person other than the Agency, nor may either City grant a franchise or other contract to another entity or person for such service.

3.07. OPERATIONAL TIMES AND DATES. The Agency shall operate the Facilities so that they are open and available for the delivery of MSW at least on the following days and times:

Name of Facility	Times and Days Open to Public	Times and Days Open for Receipt of MSW from Cities
~~Rock Prairie Road Landfill~~	~~7:00 AM to 5:00 PM Monday through Friday; 7:00 AM to 1:00 PM on Saturdays~~	~~Same as public~~
Pleasant Hill Road Compost Facility	8:00 AM to 5:00 PM. Monday through Friday; 7:30 AM to 3:30 PM on Saturdays	Same as public
Twin Oaks Landfill	7:00 AM to 5:00 PM Monday through Friday; 7:00 AM to 1:00 PM on Saturdays	Same as public

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The Agency may, but is not obligated to, close the Facilities for receipt of MSW on New Year's Day, Thanksgiving Day, and Christmas Day. The Agency shall reasonably cooperate with the Cities and other local government entities to open for receipt of MSW at additional times other than those set forth above at the discretion of the Director.

3.08. COLLECTION BY THIRD PARTIES. In the event a City contracts with a third party for the collection of MSW or ~~recyclable materials~~Recyclable Materials as described in Section 3.01, the City shall incorporate into such contract the obligations set forth in Sections 3.01, 3.02, 3.03, and 3.04, above, so that said third party shall perform and comply with the obligation of the City pursuant to said sections. No solid waste collection contract with a third party shall relieve a City of its obligations to pay its payments as set forth in Section 5.03.

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ARTICLE IV
QUALITY

4.01 GENERALLY. Each City shall deliver to the Facilities, and Agency shall only be obligated to accept delivery from the Cities, MSW that complies with quality requirements that the Agency finds it necessary from time to time to establish in order to comply with the Permits.

4.02 SPECIAL WASTE. If a City or Person wishes for the Agency to accept and dispose of Special Waste, and the Special Waste at issue may be accepted for disposal by the Agency in accordance with the Permits, the Agency may, at its option, agree to accept and dispose of same, provided that such City or Person must pay a surcharge set by the Agency for such service, which surcharge shall be set by the Agency to be an amount at least equal to any extra costs involved in such disposal.

4.03 TWIN OAKS LANDFILL SPECIAL PROVISIONS. In accordance with the provisions of the Grimes County Agreement, the Agency understands, acknowledges, and agrees that the Agency is prohibited from using the property constituting the Twin Oaks Landfill as a separately permitted industrial hazardous waste facility.

ARTICLE V
PAYMENTS

5.01. FINANCING. Subject to the prior approval of the Cities as required by the Governing Documents, the Agency will use its best efforts to issue Bonds from time to time, in amounts and at times as determined by the Agency to acquire, construct, expand, and add to the facilities. Such agreement of the Agency to issue Bonds is subject in all events to the ability of the Agency to sell and deliver Bonds in amounts, at such interest rates and at the times sufficient to pay for the Facilities and the ability of the Agency to obtain the necessary property, equipment, labor, materials, and contractors to provide same.

5.02. ANNUAL EXPENSE BUDGET. The Parties acknowledge and agree that payments to be made under this Agreement and similar agreements with Additional Entities, investment income, revenues received from other Persons for the use of the Facilities, and other revenues attributable to the Facilities will be the only sources available to the Agency to provide the Annual Expense Budget; and that the Agency has a statutory duty pursuant to Texas Health & Safety Code §363.144 to establish and from time to time to revise the charges for services to be rendered and made available to Cities and other Persons hereunder ("the Rate Schedule") so that the Annual Expense Budget shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) **Operation and Maintenance Component.** An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses; and

(b) **Bond Service Component**. A "Bond Service Component" equal to:

(1) the principal of, redemption premium, if any, and interest on, the Agency's Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or other sources if permitted by any Bond Resolution; and

(2) during each Fiscal Year, the proportionate part of any special or reserve funds required to be established and/or maintained by the provisions of any Bond Resolution including the Debt Service Reserve Fund established by the Bond Resolution authorizing the initial issuance of Bonds; and

(3) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

(4) an amount sufficient to pay all obligations with respect to any Credit Agreement, as required to be established and/or maintained by the provisions of any Bond Resolution; and

(5) the charges of paying agents for paying principal of, redemption premium, if any, and interest on, all Bonds;

(c) Debt Reimbursement Component. A "Debt Reimbursement Component" equal to the amount needed to:

(1) pay to Bryan an amount equal to the payments to be made by Bryan on the Bryan Debt for the fiscal year to which the Annual Expense Budget applies in accordance with the payment schedule set forth in Exhibit "A", attached hereto and incorporated herein by reference; and

(2) pay to College Station an amount equal to the payments to be made by College Station on the College Station Debt for the fiscal year to which the Annual Expense Budget applies in accordance with the payment schedule set forth in Exhibit "B", attached hereto and incorporated herein by reference.

5.03. MONTHLY PAYMENTS BY CITIES. For services and facilities to be provided to each City by the Agency under this Agreement, each City agrees to pay Agency based on the actual weight of MSW delivered to the Facilities multiplied by the unit price set forth in the Rate Schedule applicable to the Cities. Agency shall prepare and deliver an invoice to each City each month for charges related to MSW delivered to Agency for the prior month and for all other amounts due and owing by the City to the Agency through the last calendar date of the month prior to issuance of the invoice. Cities shall pay their invoices not later than thirty (30) days after receipt of the invoice from Agency.

5.04. DELINQUENT PAYMENTS. Payments not made by a City on or before the thirtieth (30th) day following receipt of the invoice for same shall be deemed delinquent. Interest shall accrue on delinquent payments at the rate authorized pursuant to Ch. 2251 of the

Texas Government Code, as amended. The Agency is authorized to discontinue service to any City which fails to make any delinquent payment on or before the tenth (10th) day after the Agency provides written notice to such City in accordance with Tex. Govt. Code §2251.051.The Agency shall not be obligated to recommence provision of service to a City to whom services have been discontinued pursuant to this Section 5.04 until all past due amounts, including any accrued interests and reasonable costs of collection authorized by law, have been paid to the Agency.

5.05. ANNUAL BUDGET OF AGENCY. The Agency shall adopt and approve an Annual Budget in accordance with applicable provisions of the Governing Documents. The Annual Budget shall, as a minimum, reflect the Annual Expense Budget and all reasonable anticipated revenues for the Fiscal Year for which the Annual Budget is to be adopted.

5.06. ANNUAL BUDGETS OF CITIES; APPROPRIATION. Each City shall make provision in its annual budget and shall appropriate an amount sufficient, at a minimum, for the payment of all amounts required to be paid by the City under this Agreement. In accordance with the foregoing, and pursuant to the authority of Texas Health & Safety Code §363.119(c), College Station, having established a Sanitation Fund, and Bryan, having established its Solid Waste Fund, agree that the revenues received into said funds shall be the sole source of payment of their respective obligations under this Agreement.

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5.07. INTEREST INCOME. All interest income earned by the investment of any funds created pursuant to any Bond Resolution shall be credited towards the payment of the Bond Service Component and taken into account in determining the Annual Expense Budget; except as to any fund or account created pursuant to the terms of a Bond Resolution or any financing document authorized by such Bond Resolution and funded from and Bond proceeds, together with all interest income earned by the investment thereof may, at the option of the Agency, be credited to such fund or account and used for the purposes for which the Bonds are issued, or be credited towards the payment of the Bond Service Component.

5.08. PLACE OF PAYMENT. Except to the extent otherwise provided by any Bond Resolution or as may otherwise be amended by written notice by the Agency to the Cities, all amounts due under this Agreement shall be paid and be due at the principal administrative offices of the Agency.

5.09. ABSOLUTE AND UNCONDITIONAL OBLIGATION TO PAY BOND SERVICE COMPONENT AND DEBT REIMBURSEMENT COMPONENT.

(a) Agency Mistake on Amount Not Excuse. Notwithstanding anything herein to the contrary, no failure of the Agency to estimate, and no mistake by the Agency in any estimate of, the amount of or schedule for the Bond Service Component or the Debt Reimbursement Component of the Annual Expense Budget due from each City in any Fiscal Year shall relieve each City from (or defer) its respective absolute and unconditional obligation to make payment of the Bond Service Component of the Annual Expense Budget in full when due.

(**b**) **Obligation to Pay Debt Service.** Notwithstanding anything to the contrary contained in this Agreement, the Cities each agree that they shall be unconditionally obligated to pay their respective proportionate share of the Bond Service Component and Debt Reimbursement of the Annual Expense Budget.

5.10. OTHER USE OF FACILITY.

(a) Charge for Use. Notwithstanding other provisions of this Agreement to the contrary, the Agency may provide excess available Solid Waste disposal capacity of the Facilities to any Person, provided that any such service shall in all events be subordinate and subject to the rights of the Cities under this Agreement; and provided further that the Agency must charge an amount not less than the unit cost by weight for MSW disposal being paid by any City.

~~**(b) No Discounted Charge or Free Use; Limited Exceptions.** The Agency shall not provide for or authorize any discounted charge or free use of the Facilities by any Person for any reason without the unanimous consent of the Cities; provided, however, the Agency may provide discounted or free disposal of clean fill dirt or other materials that can be used by the Agency in the operation of the Facilities in lieu of purchases that would otherwise be required by the Agency.~~

~~**(b) Discounted Charge or Free Use**~~

(b) Discounted Charge or Free Use. With the approval of the Agency Board, the Agency may authorize a discounted charge for use of the Facilities, but in no event shall the charge be less than the current rate paid by the Cities. The Agency may offer occasional no-charge services in support of community clean up and/or recycling events in one or both of the Cities and other similar events the purpose of which are to benefit and improve the community where the event occurs. Any no-charge service provided pursuant to this Section 5.10(b) will be accounted for and reported to the Agency Board following the conclusion of the event. Furthermore, the Agency may provide a discounted rate or free disposal of clean fill dirt or other materials that can be used by the Agency in the operation of the Facilities in lieu of purchases that would otherwise be required by the Agency. ~~(Amended June 22, 2011)~~

5.11. GENERAL COVENANTS. Each City further represents, covenants, and agrees that in accordance with and to the extent permitted by law:

(a) Home-Rule City. It is a duly created and existing home rule city of the State and is duly authorized under the laws of the State to enter into this Agreement; that all action on its part for the execution and delivery of this Agreement has been duly and effectively taken; and that this Agreement is a valid and enforceable special obligation of such City in accordance with its provisions, subject to laws applicable to such City

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relating to bankruptcy, reorganization and other similar matters affecting creditors' rights generally.

(b) **Competing Facilities.** To the extent it legally may, it will:

(1) not grant any franchise or permit for the acquisition, construction, or operation of any facilities within its corporate limits that might be used as a substitute for or be in competition with the Facilities;

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(2) prohibit any such competing facilities to the Facilities within its corporate limits;

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(3) not acquire or develop any facilities that would compete with the Facilities or otherwise result in the diversion of MSW from the Facilities.

(c) **Disposal of MSW at Facilities.** To the extent it legally may, unless otherwise expressly provided in this Agreement, each City agrees to commit and dedicate all generated MSW collected or controlled by it, other than Sludge, to the Facilities, and if the Facilities and their operations expand to handle other disposables beyond MSW, each City's mandatory disposal commitment shall expand to include the disposables being processed by the Agency.

(d) **Diversion or Reduction in Waste Stream.** Each City agrees that it will:

(1) inform the Agency of any diversion or reduction in its respective waste stream, and the reason therefor, in order that the Agency may measure the impact on joint solid waste management operations and costs; and

(2) attempt to make waste stream diversion and reduction on a joint basis so as to absorb together the financial impact on the tipping fee that such reduction/diversion may create.

~~**5.12. RATE SCHEDULE.** The Agency shall by resolution establish the Rate Schedule to include rates, charges, and/or fees to be charged to and paid by the City and any Person using the Facilities. The Rate Schedule applicable to the Cities shall be based on unit prices determined by dividing the total Annual Expense Budget by the total of the Estimated Contributing Weight but without subtracting the revenues reasonably anticipated to be received from Persons who are not the Cities, investment income or other revenues attributable to the Facilities. To the extent establishment of different rates applicable to different classifications of customers are allowed by law, the Rate Schedule applicable to anyone other than the Cities shall be based on the local market rate for services provided by facilities with similar operations and similar TCEQ classifications as the Facilities, but in no case less than the Rate Schedule applicable to the Cities. Upon approval of the Rate Schedule and any amendments to the Rate Schedule by the Agency, the Rate Schedule shall be submitted to the Cities for approval by their respective governing bodies, which approval shall not be unreasonably withheld or delayed. Failure of either City to object to the Rate Schedule or any part thereof on or before the thirtieth~~

~~(30th) day after submission to the City shall be deemed an approval of the part(s) to which objection is not made. If the rate for a particular service contained in the Rate Schedule and/or the entire Rate Schedule for a Fiscal Year is not approved by one or the other City, then the rate(s) with respect to the service(s) provided by the Agency for the prior Fiscal Year shall remain in place. Notwithstanding anything herein to the contrary, to the extent allowed by law, the Agency may establish rates for Persons other than the Cities that are higher, but not lower, than those charged to the Cities without the prior approval of the Cities.~~

5.12. RATE SCHEDULE. The Agency shall by resolution establish the Rate Schedule to include rates, charges, and fees to be charged to and paid by each City and any Person using the Facilities. Without regard to local market rates at similar facilities, the Rate Schedule applicable to the Cities shall be based on unit prices established by taking into consideration the Annual Expense Budget and its various components as defined in Sections 1.01 and 5.02 of this Agreement, the Estimated Contributing Weight (inclusive of all anticipated users of the Facilities), estimated revenues to the Agency from all sources, and current and reasonably projected economic conditions**.** To the extent establishment of different rates applicable to different classifications of customers are allowed by law, the Rate Schedule applicable to anyone other than the Cities shall be based on the local market rate for services provided by facilities with similar operations and similar TCEQ classifications as the Facilities, but in no case less than the Rate Schedule applicable to the Cities. Upon approval of the Rate Schedule and any amendments to the Rate Schedule by the Agency, the Rate Schedule shall be submitted to the Cities for approval by their respective governing bodies, which approval shall not be unreasonably withheld or delayed. Failure of either City to object to the Rate Schedule or any part thereof on or before the thirtieth (30th) day after submission to the City shall be deemed an approval of the part(s) to which objection is not made. If the rate for a particular service contained in the Rate Schedule and/or the entire Rate Schedule for a Fiscal Year is not approved by one or the other City, then the rate(s) with respect to the service(s) provided by the Agency for the prior Fiscal Year shall remain in place. Notwithstanding anything herein to the contrary, to the extent allowed by law, the Agency may establish rates for Persons other than the Cities that are higher, but not lower, than those charged to the Cities without the prior approval of the Cities. ~~(Amended June 22, 2011)~~

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ARTICLE VI
MISCELLANEOUS OPERATIONAL MATTERS

~~**6.01. AGENCY EMPLOYEES.** Pursuant to that certain Borrowed Employee Agreement signed by the Parties prior to or concurrent with the signing of this Agreement, the Parties acknowledge and agree that on the Effective Date, the Agency shall utilize for the purpose of operating and maintaining the Facilities the Cities' employees who, prior to the Effective Date, were employed by the Cities for such purposes. The Parties further understand and agree that when a City employee used by the Agency pursuant to the Borrowed Employee Agreement leaves the employ of the City for any reason or is reassigned by the City to a position that results in the City employee no longer being assigned to the operation and maintenance of the Facilities, the Agency may employ any person to replace the departing City employee, which person shall be an employee of the Agency.~~

6.02. CHIEF EXECUTIVE OFFICERS NOT SUBJECT TO BORROWED EMPLOYEE AGREEMENT. Notwithstanding Section 6.01, above, the Agency shall have the right to employ the Agency's chief executive officer without the obligation to fill such position with Cities' employees pursuant to the Borrowed Employee Agreement.

6.03 6.01. ANNUAL BUSINESS PLAN. Concurrent with the delivery of the Annual Budget to the Cities, the Agency shall deliver to the Cities a The first meeting of the Board approved business plan related to the operation of the Facilities addressing at least of Directors of each calendar year shall include a workshop session which shall include the following topics:

(a) Discussion and review of BVSWMA performance measures and benchmarks, at a minimum to include average customer turnaround time (all customers), average operating cost per ton disposed, annual compaction rate, facility closure status, and , including (i) environmental compliance status, (ii) financial performance, (iii) capital reserves, (iv) landfill rates, (v) site density, and (vi) customer satisfaction;

(b) short-termDiscussion and consideration of long-term waste stream tonnage to be received at each Facility;

(c) anticipated new customersdevelopment issues concerning BVSWMA, including but not limited to such items as landfill expansions and goals and description of marketing efforts to secure same;
/or changes in BVSWMA's scope of
(d) compaction goals;

(e) short and long range capacities and life expectancy of each Facility;

(f) master plan for future expansion;

(g) possible future services with associated costs and revenues; and;

(h) short and long-term compost and (c) Discussion of other waste diversion strategies.

The Agency agrees to submit a draftconsiderations or concerns of the annual business plan to the Agency's Technical Advisory Committee in sufficient time to allow said committee to have not less than thirty (30) calendar days to review and comment on the proposed plan prior to delivery of the completed plan to the Cities.Board; and

(d) Review of the Executive Director, including but not limited to a review of the Executive Director's past job performance and current goals and expectations of the Executive Director.;

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Following the above-described workshop session, the Executive Director shall prepare an Annual Business Plan summarizing the workshop discussion of items (a) through (c) of this section. Such Annual Business Plan shall be presented to the Board at the next regularly scheduled meeting of the Board of Directors for approval by the Board of Directors.

6.~~04~~02. ADDITIONAL REPORTING TO CITIES. The Agency shall deliver to the Cities various reports and notifications that include as a minimum the following:

(a) ~~Quarterly~~ Monthly Reports. Reports to be delivered not later than ~~the 20th (needs to change)~~forty-five (45) days after the last day of the ~~month following the end of the calendar quarter of each Fiscal Year~~ reporting period, to include:

(1) Revenues for the ~~calendar quarter~~preceding month and Fiscal Year ~~-~~to~~-~~-Date received from all sources by the Agency;

(2) Expenses of the Agency for the ~~calendar quarter~~preceding month and Fiscal Year~~-~~-to~~-~~-Date; and

(3) Tonnage of MSW received ~~by~~for the preceding month ~~during the calendar quarter~~ and Fiscal Year~~-~~-to~~-~~-Date for each Facility, both cumulative and broken down by each City and third parties~~;~~.

~~(4) Compaction rate for the calendar quarter and Fiscal Year to Date.~~

~~**(b) Annual Report.** Not later than thirty (30) calendar days after delivery of the Agency's annual audit to the City as provided in Section 4.01 of the Bylaws, the Agency shall present an annual report to the Cities consisting of, as a minimum, a cumulative report of the quarterly monthly reports for the prior Fiscal Year prepared pursuant to Section 6.04(a), above, and an executive summary of the findings in the Agency's financial audit related to the Agency's financial status. As soon as reasonably practical after delivery of the Annual Report to the Cities, upon the request of any party, the parties agree to make a good faith effort to schedule a joint meeting of the Board of Directors of the Agency with the City Council of each City or, if practical, a joint meeting with both City Councils; provided, however, the failure to hold such a meeting shall not be a default of this Agreement.~~

(b) Annual Report. The Annual Report shall include the final Monthly Report of the fiscal year and shall include a year-to-date financial summary and the Annual Audit required under Section 9.08 herein.

(c) Other Notices. Not later than five (5) business days after receiving the information, the Agency shall notify each City about any filed or threatened litigation against the Agency and any Notice of Permit violations related to operations of the Facilities.

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6.~~05~~03. DEBT REIMBURSEMENT. Not later than the date set forth in Exhibits "A" and "B" hereto, the Agency shall pay Bryan and College Station the amounts set forth in the Debt Reimbursement Schedules. In the event the Agency fails to make such payments on the date required, the City to whom payment was not timely made may, at its sole option and as its sole remedy, reduce the invoiced amounts due to the Agency by the amount of the delinquent Debt Reimbursement Payment. Notwithstanding the Agency's default of this Section 6.~~05~~03, the City to whom the delinquent payment was due shall not be relieved or excused from the payment of its Monthly Payment required by Section 5.03 except to the extent of the payment reduction allowed by this Section 6.~~05~~03.

ARTICLE VII
ADDITIONAL CAPACITY AND FACILITIES

As the responsible agency for the establishment, administration, management, operation, and maintenance of the Facilities, the Agency will, subject to the approval of the Cities as required by the Governing Documents, from time to time determine when and to what extent it is necessary to provide Additional Facilities to receive, transport, treat, and dispose of the Solid Waste of the Cities and to issue Bonds, subject to the provisions of this Agreement, to accomplish its purposes.

ARTICLE VIII
REMEDIES

8.01. REMEDIES. Notwithstanding anything in this Agreement to the contrary, as governmental entities, each City and the Agency have not waived immunity from suit and liability under Texas law and the execution and delivery of this Agreement does not constitute such a waiver. The foregoing sentence notwithstanding and to the extent permitted by law, the obligations, agreements, and covenants of the Agency and each City (including, without limitation, the obligation of each City to pay the Annual Expense Budget, as provided herein) contained in this Agreement may be enforced by any party to this Agreement and any holder of Bonds of the Agency by such suits, actions, or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for mandamus or the specific performance of any covenant or agreement contained herein.

8.02. LEGAL AUTHORITY. In entering into this Agreement and performing all duties and obligations hereunder, the Cities and the Agency exercise their authority under and in accordance with the constitution and laws of the State including, but not limited to the Act, Chapter 362, Texas Health & Safety Code, the Governing Documents, the Cities' Charters; and all other laws that may authorize this Agreement, all of which provisions and laws, cited or uncited herein, shall cumulatively provide the authority for this Agreement.

ARTICLE IX
MISCELLANEOUS

9.01. EFFECTIVE DATE. This Agreement shall become effective on the date signed by the authorized representatives of the Agency and the Cities ("the Effective Date").

9.02. TERM OF AGREEMENT. This Agreement shall continue in force from the Effective Date at least until all Bonds, including any Bonds issued to refund same, and the interest thereon, the Bryan Debt, and the College Station Debt, shall have been paid in full; and shall also remain in force thereafter until dissolution of the Agency pursuant to the Governing Documents and applicable state law.

9.03. RECITALS. The recitals set forth in the preamble to this Agreement are incorporated in and made a part of this Agreement for all purposes.

9.04. NOTICES. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by either party to the other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If intended for City of College Station:

City of College Station, Texas
Attn: Mayor
1101 Texas Avenue
P.O. Box 9960 (77842)
College Station, Texas 77840

With copy to:

City Attorney
1101 Texas Avenue
P.O. Box 9960 (77842)
College Station, Texas 77840

If intended for City of Bryan:

City of Bryan, Texas
Attn: Mayor
300 South Texas Avenue
P.O. Box 1000 (77805)
Bryan, Texas 77803

With copy to:

City Attorney
300 South Texas Avenue
P.O. Box 1000 (77805)
Bryan, Texas 77803

If intended for Agency:

Brazos Valley Solid Waste Management Agency, Inc.
Attn: Executive Director
1101 Texas Avenue
P.O. Box 9960 (77842)
College Station, Texas 77840

With copy to:

Mike Gentry
West, Webb, Allbritton & Gentry
1515 Emerald Plaza
College Station, Texas 77845

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The Agency and each City hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other parties to this Agreement.

9.05. FORCE MAJEURE. In case by reason of "Force Majeure," the Agency or any City shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, but in no case later than thirty (30) days following the onset of the event or cause, the obligation of the party giving such notice, so far as it is affected by such Force Majeure (with the exception of the obligation of each City to make the payments required in Section 5.03 of this Agreement, which in all events shall be made as provided therein) shall be suspended during the continuance of the inability then claimed, but for no longer periods, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

9.06. INSURANCE. The Agency will carry insurance for such purposes and in such amounts as are determined by the Agency to be necessary or advisable. The Agency shall provide proof of insurance to the Cities on an annual basis.

9.07. REGULATORY BODIES. This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Texas, or any authorized representative or agency of any of them.

9.08. ANNUAL AUDIT OF THE FACILITIES. The Agency shall, at the close of each Fiscal Year, cause an Annual Audit of books and accounts of Agency, including the Facility, to be prepared and a copy of such Annual Audit to be provided to each City as required by the Governing Documents.

9.09. SUBORDINATION TO PERMIT/STATE OR FEDERAL LAWS. RULES. ORDERS. OR REGULATIONS. All parties understand and agree that any provision of this Agreement is subordinate to the Permits. This Agreement cannot allow or require the Agency to perform any action, or omit to take any action, that will result in the Agency violating any provision of its Permits. This Agreement is also subject to all applicable federal and State laws and any other applicable permits, ordinances, rules, orders, and regulations of any local, State, or federal governmental authority having or asserting jurisdiction but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction and each City and the Agency represent that, to the best of their knowledge, no provisions of any applicable federal or State law, including the respective City Charter of each City, nor any permit, ordinance, rule, order, or regulation of any party will limit or restrict the ability of such party to carry out their respective obligations under or contemplated by this Agreement. The Agency understands, acknowledges and agrees that to the extent required by Texas Transportation Code §431.101(g), as amended, Agency must comply with the state law applicable to the Cities with respect to design and construction of projects, including the procurement of design and construction services.

9.10. MODIFICATION. No change, amendment, or modification of this Agreement shall be made or be effective that will affect adversely the prompt payment when due of all moneys required to be paid by the Cities under the terms of this Agreement and no such change, amendment, or modification shall be made or be effective that would cause a violation of any provisions of any Bond Resolution or any financing document authorized by such Bond Resolution, including and Credit Agreement.

9.11. SEVERABILITY. The Parties specifically agree that in case anyone or more of the sections, subsections, provisions, clauses, or words of this Agreement or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Agreement or the application of such actions, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

9.12. AGREEMENT NOT FOR BENEFIT OF THIRD PARTIES. This Agreement is made for the exclusive benefit of the Cities, the Agency, the owners of the Bonds, the parties to any Credit Agreements, the underwriters of any offering of Bonds and each remarketing agent and tender agent, if any, for any Bonds, and their respective successors and assigns herein permitted, and not for any other third party or parties; and nothing in this Agreement, expressed or implied, is intended to confer upon any party or parties other than the Agency (including its officers, directors, employees, agents, and attorneys), the Trustee, the owners of the Bonds, the Cities, and the parties to any Credit Agreements, the underwriters of any offering of and remarketing agent and tender agent, if any, for any Bonds, and their respective successors and assigns herein permitted, any rights or remedies under or by reason of this Agreement.

9.13. SUCCESSION AND ASSIGNMENT. This Agreement is binding on and inures to the benefit of the parties hereto and their respective successors, representatives, and assigns. This Agreement may not be assigned by any party hereto without (i) complying with any provisions relating to the right of the parties to assign this Agreement contained in the Bond Resolution and (ii) prior written notice to and approval by the other parties, which consent may be withheld without cause. The provisions of this Section 9.13 do not affect the ability of the Agency to assign some or all of its rights in this Agreement for the benefit of the owners of the Bonds.

9.14. ENTIRE AGREEMENT. This Agreement and the Related Agreements represent the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

9.15. EXHIBITS. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

9.16. GOOD FAITH NEGOTIATION; DISPUTE MEDIATION. Whenever a dispute or disagreement arises under the terms of this Agreement, the Parties agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Parties shall refer the matter to outside mediation prior to engaging in litigation.

9.17. GOVERNING LAW. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Brazos County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

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IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the date of this Agreement.

CITY OF BRYAN **ATTEST:**

By:_____ _____

Mayor ~~D. Mark Conlee~~_____ City Secretary, City of Bryan

CITY OF COLLEGE STATION **ATTEST:**

By:_____ _____

Mayor ~~Ben White~~_____ City Secretary, City of College Station

BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY, INC.

By:_____

~~President~~Chairman

EXHIBIT A

BVSWMA Reporting Requirements

There are several reports defined in the Bylaws or Operations Agreement that BVSWMA must present to the Board, Cities or Technical Advisory Committee ("TAC"). These reports consist of Monthly Reports, an Annual Audit, an Annual Report, an Annual Business Plan and an Annual Budget. Below is a brief description of each of these reports along with current due dates and proposed revisions.

MONTHLY REPORTS (Due to the Board and TAC)

As stated in Section 8.04 of the Bylaws, the Executive Director of BVSWMA ("ED") shall provide a monthly operational and financial report to the Board and TAC, inclusive of entered into contracts and expenditures made by the ED on behalf of BVSWMA. Pursuant to Section 8.04 of the Bylaws, monthly reports would be due to the Board and TAC forty-five (45) calendar days upon the closure of the reporting month.

MONTHLY REPORTS (Due to the Cities)

As stated in Section 6.02 of the Operations Agreement, Monthly Reports are due to the Cities within forty-five (45) days following the end of the month addressing the items listed in such Section 6.02.

ANNUAL AUDIT (Due to the Board and Cities)

As stated in Section 4.01 of the Bylaws, the Board shall have an annual Audit prepared and upon receiving the completed audit BVSWMA shall immediately provide a copy to the Cities. The annual Audit is due one hundred twenty (120) calendar days after the close of the fiscal year, JANUARY 28.

ANNUAL REPORT (Due to the Cities)

As stated in Section 6.02(b) of the Operations Agreement, the Annual Report shall include the final Monthly Report of the fiscal year and shall include a year-to-date financial summary and the Annual Audit required under Section 9.08 herein.

ANNUAL BUDGET (Due to the Cities)

As stated in Section 4.06 of the Bylaws, the Annual Budget must be approved by a two-thirds (2/3) majority vote of the entire Board. After approval by the Board, the budget shall be submitted to each City for approval. The Annual Budget must be approved by the Board at least ninety (90) days prior to the beginning of each fiscal year, JULY 3. Pursuant to Section 2.15 and Section 4.06 of the Bylaws, a draft of the Annual Budget is to be reviewed by the TAC prior to submission to the Board for approval or to the Cities, and such draft is to be delivered to the

TAC no later than thirty (30) days prior to the date the Annual Budget is submitted to the Board for approval.

ANNUAL BUSINESS PLAN (Due to the Cities)

As stated in Section 6.01 of the Operations Agreement, a draft of the Annual Business Plan shall be presented to the Board for approval at the second regularly scheduled meeting of the Board of Directors of each calendar year.

REPORTING TIMELINE

(All reports may be submitted before the dates listed since these are considered "no later than" dates.)

	TAC	BOARD	CITIES
MONTHLY REPORTS	45 calendar days upon the closure of the reporting month - Bylaws 8.04(b)	45 calendar days upon the closure of the reporting month - Bylaws 8.04(b)	45 calendar days upon the closure of the reporting month – Operations Agreement 6.02
ANNUAL AUDIT	NA	JANUARY 28	JANUARY 28
ANNUAL REPORT	JANUARY 28	JANUARY 28	JANUARY 28
ANNUAL BUSINESS PLAN	DRAFT PRESENTED AT SECOND BOARD MEETING OF THE CALENDAR YEAR	DRAFT PRESENTED AT SECOND BOARD MEETING OF THE CALENDAR YEAR	DRAFT PRESENTED AT SECOND BOARD MEETING OF THE CALENDAR YEAR
ANNUAL BUDGET	JUNE 3	JULY 3	JULY 3

Attachment #4

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BYLAWS OF THE
BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY, INC.

A Texas Local Government Corporation created on behalf of
the Cities of Bryan and College Station, Texas

ARTICLE I
Corporate Purpose and Agency

1.01 *Purpose*. Brazos Valley Solid Waste Management Agency, Inc. (the "Corporation") is organized for the purpose of auditing, assisting, and acting on behalf of the City of Bryan, Texas, and the City of College Station, Texas, (the "Cities") in the performance of their governmental functions to promote the common good and general welfare of the Cities, including, without limitation, the financing, construction, ownership, and operation of the existing and future municipal solid waste landfills and the existing compost facility (collectively the "Facilities") on behalf of the Cities, and to perform such other governmental purposes of the Cities, including, without limitation, the collection, handling, transportation, storage, processing, and disposal of solid waste, as may be determined from time to time by the City Councils of the Cities (the "City Councils"). Subject to applicable state law and any contractual obligations of a City or the Corporation, a City or the Cities may discontinue participation in the activities of the Corporation, or a non-participating unit of local government, business, or individuals may join in the activities of the Corporation, under procedures established in the Bylaws of the Corporation (the "Bylaws").

1.02 *Local Government Corporation*. The Corporation is formed pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the "Act"), as it now or may hereafter be amended, and Chapter 394, Texas Local Government Code, which authorizes the Corporation to assist and act on behalf of the Cities and to engage in activities in the furtherance of the purposes for its creation.

1.03 *Non-Profit Corporation*. The Corporation shall have and exercise all of the rights, powers, privileges, and functions given by the general laws of Texas to non-profit corporations incorporated under the Act including, without limitation, the Texas Non-Profit Corporation Act, as amended (Tex. Rev. Civ. Stat. art. 1396-1.01, et.seq., as amended) and/or the Texas Nonprofit Corporation Law (Tex. Bus. Org. Code, Chapters 20 and 21 and the provisions of Title I to the extent applicable to non-profit corporations, as amended), whichever is applicable or their successor.

1.04 *Powers of Non-Profit Corporation*. The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created; provided, however, that the Corporation shall not issue

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any bond, certificate, note or other obligation evidenced by an instrument without the written consent of each of the Cities or as otherwise allowed by the Bylaws.

1.05 *Governmental Entity for Immunity*. The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (2), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Section 101.001 et seq., Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time.

1.06 *City Consent*. References herein to the consent or written consent of a City shall refer to an ordinance, resolution or order of the governing body of the City.

ARTICLE II
Board of Directors

2.01 *Powers Vested in Board*. All powers of the Corporation shall be vested in a Board of Directors consisting of seven (7) members (the "Board") subject to the oversight of the Cities and as otherwise provided in these Bylaws. The Board shall independently manage and operate the Facilities in accordance with all applicable laws and documents, including the Articles of Incorporation of the Corporation (the "Articles"), these Bylaws, the Operations Agreement (as defined herein), the Asset Transfer and Debt Reimbursement Agreement~~, the Operation Agreement (as those terms are~~ (as defined in the Interlocal Agreement by and between the Cities dated January 14, 2009 (the "ILA")), and such other documents agreed to by the Cities and as the same may be amended from time to time. The qualification, selection, terms, removal, replacement, and resignation of the members of the Board of Directors of the Corporation ("Director" or "Directors") shall be governed by Article VI of the Articles.

~~2.02 *Initial Board and Transition*. The initial directors of the Corporation ("Director" or "Directors") shall be those persons named in Article VIII of the Articles. To provide for staggered terms, each initial Director named in Article VIII of the Articles shall serve for the term prescribed therein. With respect to the initial Board, the terms of the initial Directors shall commence on the date the Secretary of State has issued the certificate of incorporation for the Corporation. Upon the expiration of the terms of office of the initial Directors, the subsequent Directors~~2.02 *Staggered Terms of the Directors and Transition*. In accordance with Section 6.07 of the Articles, these Bylaws set forth the process and procedure for causing the staggered terms of the Directors. Except as provided herein or in the Articles, the term of each Director shall be three (3) years. To provide for staggered terms, the following procedure shall be followed in order to create three tranches of staggered terms. Presently, four (4) Directors have terms expiring on September 30, 2014, two (2) which have been appointed by each City. Upon the expiration of the terms of the Directors whose terms expire on September 30, 2014, each City shall appoint one (1) succeeding Director to serve for a one (1) year period, expiring on September 30, 2015, with the other succeeding Director to serve a for a full

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three (3) year term, expiring on September 30, 2017. Upon the expiration of the term of the Directors on September 30, 2015, each City shall appoint a succeeding Director to serve for a full three (3) year term thereafter. The effect of the above is that each City shall have the term of one (1) Director expire every year, with the term of the seventh (7th) Director appointed by the Cities, as set forth in the Articles, expiring every third (3rd) year. Except as set forth herein, upon the expiration of the terms of office of a Director, the subsequent Director shall be appointed for a three (3) year term or until his or her successor is appointed by the entity authorized to appoint the Director; provided, however, upon the death, resignation or removal of a Director, the entity responsible for that Director's appointment shall appoint a replacement Director to serve for the unexpired term of office of the replaced Director.

2.03 *Governing Documents*. All other matters pertaining to the internal affairs of the Corporation shall be governed by these Bylaws, so long as these Bylaws are not inconsistent with the Articles, the Operation Agreement (as defined herein), the Asset Transfer and Debt Reimbursement Agreement~~, the Operation Agreement (as those terms are~~ (as defined in the ILA), and such other documents agreed to by the Cities and as the same may be amended from time to time, or the laws of the State of Texas.

2.04 *Voting Rights*. All Directors shall have full and equal voting rights. All references herein to an act, resolution or vote of the Directors shall refer to a vote of the Directors entitled to vote on the matter as provided herein.

2.05 *Meetings of Directors*. The Directors may hold their meetings and may have an office and keep the books of the Corporation at such place or places within Brazos County, Texas, or Grimes County, Texas, as the Board may from time to time determine; provided, however, in the absence of any such determination, such place shall be the registered office of the Corporation in the State of Texas. The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required under Chapter 551, Texas Government Code (the "Open Meetings Act"); provided that the notice of each meeting of the Board shall be posted on the official bulletin board designated by the Cities for the posting of meetings of the Cities' respective City Councils. The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552, Texas Government Code (the "Public Information Act").

2.06 *Annual Meetings*. The annual meeting of the Board shall be held at the time and at the location in Brazos County, Texas, or Grimes County, Texas, designated by the resolution of the Board for the purposes of transacting such business as may be brought before the meeting.

2.07 *Regular Meetings*. Regular meetings of the Board shall be held at least quarterly, at such times and places as shall be designated from time to time by resolution of the Board.

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2.08 *Special and Emergency Meetings*. Special and emergency meetings of the Board shall be held whenever called by the ~~President~~Chairman of the Board, the Secretary, or by a majority of the Directors who are serving duly appointed terms of office at the time the meeting is called. A majority of the Board, or a quorum, with at least two (2) Board members appointed by each City, must be present for any special called meeting. A majority of the Board or a quorum, with at least one (1) Board member appointed by each City, must be present for any emergency called meeting. The Secretary shall give notice of each special meeting in person, by telephone, facsimile, mail or email at least three (3) days before the meeting to each Director and to the public in compliance with the Open Meetings Act. Notice of each emergency meeting shall also be given in the manner required under the Open Meetings Act. An emergency meeting may only be held when there is an emergency or an urgent public necessity exists and immediate action is required of the Board because of an imminent threat to public health and safety, or a reasonably unforeseeable situation. The agenda notice of the emergency meeting must be posted at least two (2) hours before the meeting and clearly identify the emergency or urgent public necessity. The ~~President~~Chairman, or the Board member who calls an emergency meeting must notify by telephone, facsimile transmission, or electronic mail not later than one (1) hour before the meeting those members of the news media that have previously filed at the Corporation a request containing all pertinent information for the special notice and has agreed to reimburse the Board for the cost of providing the special notice. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special meeting. At any meeting at which every Director shall be present, even though without any notice, any matter pertaining to the purposes of the Corporation may be considered and acted upon to the extent allowed by the Open Meetings Act.

2.09 *Quorum*. Except as otherwise set forth in Section 2.08 of these Bylaws, a majority of the entire Board (four) shall constitute a quorum for the consideration of matters pertaining to the Corporation. If at any meeting of the Board there is less than a quorum present, a majority of those present may adjourn the meeting. The act of a majority of the Directors present and voting at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law, by the Articles, or by these Bylaws.

2.10 *Assent Presumed Without Express Abstention or Dissent*. A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action unless such person's dissent or abstention shall be entered in the minutes of the meeting or unless such person shall file written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof. Such right to dissent or abstain shall not apply to a Director who voted in favor of the action.

2.11 *Conduct of Business*. At the meetings of the Board, matters pertaining to the purpose of the Corporation shall be considered in such order as the Board may from time to time determine. At all meetings of the Board, the ~~President~~Chairman shall preside, and in the absence of the ~~President~~Chairman, the Vice~~-President~~-Chairman shall preside.

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In the absence of the ~~President~~Chairman and the Vice~~ President~~-Chairman, an acting ~~President~~Chairman shall be chosen by the Board from among the Directors present. The Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.

2.12 *Executive Committee; Other Committees*. The Board may, by resolution passed by a majority of the entire Board, designate two (2) or more Directors to constitute an executive committee or other type of committee. In addition, the Board may appoint members of Corporation staff and citizens of the Cities to be members of a committee, except for an Audit, Compensation, or Governance Committee, which committees may only be composed of Directors.

2.13 *Power of Committees*. To the extent provided in the authorizing resolution for the committee and the Board-approved committee charter, a committee may not exercise the authority of the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings, shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall report the same to the Board from time to time. Committees authorized to exercise the powers of the Board shall give notice of any meeting in the manner required for a meeting of the Board. Committees are subject to the regulations which apply to committees of government entities including the Public Information Act and Open Meetings Act.

2.14 *Compensation of Directors*. Directors, as such, shall not receive any salary or compensation for their services as Directors, except the seventh (7th) Director appointed by the Board may receive such compensation as determined by the other Board members; provided, however, Directors may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes.

2.15 *Technical Advisory Committee*. The Board shall establish a Technical Advisory Committee composed of members who are, in the judgment of the Board, qualified to provide advice with respect to the activities of the Corporation. The size of the Technical Advisory Committee will be determined by the Board and may be adjusted from time to time; provided, however, the Technical Advisory Committee shall in no case have fewer than ~~five (5~~four (4) members, with ~~at least~~ two (2) members appointed by the Bryan City Manager~~, at least~~ and two (2) members appointed by the College Station City Manager~~, and the remaining members appointed by the Board~~. The Board will designate one or more of its Directors to be a liaison to the Technical Advisory Committee to assure close communication between the Board and the Technical Advisory Committee. Directors shall not be eligible to be members of the Technical Advisory Committee.

Members of the Technical Advisory Committee appointed by ~~the Board shall serve for a term of one (1) year or such longer term as may be fixed by the Board, and may be removed by the Board at any time, with or without cause. Members of the Technical Advisory Committee appointed by the City Managers of the Cities shall serve~~

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~~at the pleasure of the respective City Managers.~~a City Manager shall serve at the pleasure of such City Manager. Members of the Technical Advisory Committee shall not receive any salary or compensation for their services; provided, however, they may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes with prior approval of the Board.

The Technical Advisory Committee shall meet as needed to review the Annual Budget, construction contracts and other non-routine business that may require consideration by the Board of Directors.

The officers and Directors of the Corporation may consult with the Technical Advisory Committee from time to time with respect to the activities of the Corporation, but the Technical Advisory Committee shall in no way exercise or restrict the powers of the Board nor limit its responsibility for the management of the affairs of the Corporation. The members of the Technical Advisory Committee may meet to discuss Corporation-related activities and to advise the Board and Executive Director thereon. Based upon the individual areas of professional expertise, members of the Technical Advisory Committee may provide skilled analysis and comments regarding proposed Corporation plans and programs.

~~2.16~~2.16 *Investment Advisory Committee*. The Board shall establish an Investment Advisory Committee composed of members who are, in the judgment of the Board, qualified to provide advice with respect to the investment activities of the Corporation and compliance with the Public Funds Investment Act (PFIA). The Investment Advisory Committee shall consist of one (1) member appointed by the Bryan City Manager and (1) member appointed by the College Station City Manager. The Board will designate one or more of its Directors to be a liaison to the Investment Advisory Committee to assure close communication between the Board and the Investment Advisory Committee. Directors shall not be eligible to be members of the Investment Advisory Committee.

Members of the Investment Advisory Committee shall serve at the pleasure of the respective City Managers. Members of the Investment Advisory Committee shall not receive any salary or compensation for their services; provided, however, they may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes with prior approval of the Board.

The officers and Directors of the Corporation may consult with the Investment Advisory Committee from time to time with respect to the activities of the Corporation, but the Investment Advisory Committee shall in no way exercise or restrict the powers of the Board nor limit its responsibility for the management of the affairs of the Corporation. The members of the Investment Advisory Committee may meet to discuss BVSWMA related activities and to advise the Board thereon. Based upon the individual areas of professional expertise, members of the Investment Advisory Committee may provide skilled analysis and comments regarding BVSWMA investments and compliance with the Public Funds Investment Act and the Investment Policy of the Corporation.

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2.17 *Director Reliance on Consultant Information*. A Director shall not be liable if, while acting in good faith and with ordinary care, such Director relies on information, opinions, reports or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

(a) one or more other officers or employees of the Corporation;

(b) an employee of a City;

(c) legal counsel, public accountants, or other persons as to matters the Director reasonably believes are within the person's professional or expert competence; or,

(d) a committee of the Board of which the Director is not a member.

2.~~17~~18 *Executive Director*. The Board is authorized to hire an Executive Director who shall serve at the pleasure of the Board. The Executive Director shall be the chief executive officer of the Corporation and shall have the duties and powers as set forth in Article VI of these Bylaws. The Board shall establish the compensation, and may establish duties and responsibilities of the Executive Director in addition to those prescribed by Article VI of these Bylaws. The hiring and/or removal of the Executive Director shall be by a majority vote of the entire Board.

2.~~18~~19 *Attorneys and Consultants*. The Board may employ attorneys, auditors, certified accountants, and such other professionals and consultants as may be required for the purposes of the Corporation from time to time.

ARTICLE III
Officers

3.01 *Titles and Term of Office*. The officers of the Corporation shall ~~be~~consist of a ~~President,~~ Chairman and a Secretary and may also consist of one or more Vice ~~Presidents~~ Chairmans, a ~~Secretary,~~ Treasurer, and such other officers and assistant officers as may be deemed necessary. New offices may be created and filled at any meeting of the Board ~~may from time to time elect or appoint.~~. Each officer shall be a current Director. One person may hold more than one office, except the ~~President~~Chairman shall not hold the office of Secretary. The term of office for each officer shall be ~~one (1) year and shall serve from October 1 through the following September 30~~two (2) years, except that such office shall terminate on the earlier of: (a) the date that the officer is replaced by the Board; or (b) the date that the officer is no longer a member of the Board.

Notwithstanding the foregoing, the office of the Chairman shall rotate between a members of the Board from each City in alternating two (2) year intervals.

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All officers shall be appointed and subject to removal at anytime, with or without cause, by a vote of a majority of the entire Board.

A vacancy in any office elected pursuant to this Article III shall be filled by a vote of a majority of the entire Board and such elected officer shall serve for the balance of the remaining term of the immediately former officer; provided, however, in the event of the vacancy of the Chairman, a subsequent Chairman must be from the same City as the immediately former Chairman.

3.02 *Powers and Duties of the ~~President~~Chairman*. The ~~President~~Chairman shall be a member of the Board and shall preside at all meetings of the Board. Such person shall have such duties as are assigned by the Board. The ~~President~~Chairman may call special or emergency meetings of the Board. Any special or emergency called meeting shall be called and conducted in accordance with Section 2.08 of these Bylaws. In furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles, the ~~President~~Chairman or Vice~~-President~~-Chairman may sign and execute all bonds, notes, deeds, conveyances, franchises, assignments, mortgages, contracts and other obligations in the name of the Corporation. The ~~President~~Chairman shall be an ex officio member of all committees.

3.03 *Powers and Duties of the Vice~~-President~~-Chairman*. A Vice~~-President~~-Chairman shall be a member of the Board and shall have such powers and duties as may be assigned to such person by the Board or the ~~President~~Chairman including the performance of the duties of the ~~President~~Chairman upon the death, absence, disability, or resignation of the ~~President~~Chairman, or upon the ~~President's~~Chairman's inability to perform the duties of such office. Any action taken by the Vice~~-President~~-Chairman in the performance of the duties of the ~~President~~Chairman shall be conclusive evidence of the absence or inability to act of the ~~President~~Chairman at the time such action was taken.

3.04 *Treasurer*. The Treasurer~~ shall have custody of all the funds and securities of the Corporation which come into possession of the Corporation. When~~, if any, when necessary or proper,~~ the Treasurer~~ (i) may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board; (ii) may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board; (iii) shall enter or cause to be entered regularly in the books of the Corporation to be kept by such person for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; (iv) shall perform all acts incident to the position of Treasurer subject to the control of the Board, including the monitoring and audit of all cash accounts whose existence must first be approved by the Board; and (v) shall, if required by the Board, give such bond for the faithful discharge of his or her duties in such form as the Board may require.

3.05 *Secretary*. The Secretary (i) shall keep the minutes of all meetings of the Board in books provided for that purpose; (ii) shall attend to the giving and serving of all

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notices; (iii) in furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles, may sign with the ~~President~~Chairman in the name of the Corporation and/or attest the signatures thereof, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; (iv) shall have charge of the Corporation's books, records, documents and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the Corporation during business hours; and, (v) shall in general perform all duties incident to the office of Secretary subject to the control of the Board. The Secretary shall also perform the duties of the Treasurer if no Treasurer has been appointed.

3.06 *Compensation*. Officers shall serve without compensation for their duties, but are entitled to receive reimbursement for their reasonable expenses only in performing their functions in accordance with policies adopted by the Board.

3.07 *Officer Reliance on Consultant Information*. In the discharge of a duty imposed or power conferred on an officer of the Corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

(a) one or more other officers or employees of the Corporation, including members of the Board;

(b) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or,

(c) an employee of one of the Cities.

ARTICLE IV
Financial Responsibilities

4.01 *Audit*. Not later than one hundred twenty (120) days after the close of each fiscal year, the Board shall have an annual audit prepared by an independent auditor who is duly licensed or certified as a public accountant in the State of Texas of the financial books and records of the Corporation. Upon receiving the completed audit, the Corporation shall immediately provide a copy to each City.

4.02 *Capital Spending Authority*. The Board may expend funds for capital improvements for the Facilities in accordance with the capital plan approved by the Board for the current fiscal year budget as follows:

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(a) Funds from a City shall be used for the purposes of the Corporation as authorized and directed by the Cities.

(b) Funds from other sources, such as donations, may be used at the discretion of the Board for capital purposes as long as the uses are consistent with the Cities' direction and are not reasonably expected by the Board to increase the operation and maintenance costs of the Corporation above the limits established in Section 4.04, below or have a capital cost greater than $100,000.

(c) For expansion of the Facilities beyond the size, function and scope existing at the time of the formation of the Corporation with the prior approval of the Cities.

(d) Proceeds of bonds, notes and other obligations shall be expended in accordance with the terms of the resolution authorizing the issuance of such bonds, notes or other obligations.

4.03 *Issuance of Debt*.

(a) The Corporation, with the approval of the Cities, is authorized to issue short-term debt in the form of bonds, notes, and other obligations which by their terms mature and are payable not later than one (1) year from their initial date of issuance. Where possible, the amount and purpose of the short term debt shall be projected by the Corporation in its annual budget to the Cities. Cities shall be given the first opportunity to provide these funds before the Board incurs debt.

(b) The Corporation, with the approval of the Cities, is authorized to issue long-term debt in the form of bonds, notes, and other obligations which by their terms mature and are payable beyond one (1) year from their initial date of issuance. Long term debt may be issued to finance capital improvements and costs related thereto, and to refund or refinance any outstanding bonds, notes, or obligations issued or incurred by the Corporation, or such for such other reasons as maybe approved by the Cities.

(c) Short-term debt as defined in Subsection (a) and long-term debt as defined in Subsection (b) of this Section 4.03 may be issued only if:

I. the issuance of said debt is approved by a majority of the entire Board;

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II. at least one (1) Director appointed by each of the Cities are among the majority of the Board voting in favor of issuance of the debt; and,

III. the issuance of said debt is approved by resolution or ordinance of the Cities.

(d) Any debt issuance approved by the Cities shall be paid from any source or sources permitted by law, including the income and revenue of the Corporation.

4.04 ~~*Increase*~~ *Financially Material Event*. A Financially Material Event is defined as a projected discrepancy from the budgeted amount of ten percent (10%) or more (i) decrease of annual revenue, (ii) increase of O&M ~~*Costs*. Except for items mandated by~~expenses (including those resulting from changes in state or federal law or regulation~~ that could not reasonably have been anticipated prior to submission of the Corporation's annual budget to the Cities for review~~), (iii) a combination of decreased annual revenue and ~~comment,~~increased O&M expenses, or (iv) increase in capital expenses. In the event ~~any one or more items are added during a fiscal year that would increase or cause the annual operation and maintenance costs to exceed ten percent (10%) above the budgeted amount for that year~~of a Financially Material Event, the Board ~~must receive prior~~ or either City may request a revised Annual Budget including the Financially Material Event. The Board shall approve or reject the revised Annual Budget within thirty (30) days after the revised Annual Budget has been submitted for approval ~~from both Cities prior to making that addition. Failure of~~ ; provided, that the ~~Cities~~failure of the Board to reject the request on or before the thirtieth (30th) day after submission ~~of the request to a City~~ shall be deemed an approval of the request.

4.05 *Fiscal Year*. The fiscal year of the Corporation shall begin October 1 of each year.

4.06 *Annual Budget*. No later than ninety (90) days prior to the beginning of each fiscal year, the Board shall prepare, or cause to be prepared, and approve a budget (the "Budget") for each fiscal year. The Budget must be approved by a two-thirds (2/3) majority vote of the entire Board. After approval by the Board, the Budget shall be submitted to each City for approval. Failure of a City to reject the Budget approved by the Board on or before the thirtieth (30th) day after submission to the Cities shall be deemed an approval of the Budget.

The Executive Director shall submit a draft of the proposed Annual Budget to the Technical Advisory Committee prior to thirty (30) days before the Annual Budget is submitted for approval by the Board.

If the Board fails to approve the Budget, or if the Budget is not approved by each City~~, then during the first three (3) years of this Agreement, the Budget for the prior fiscal year shall be deemed approved. After the third (3rd) year of the Agreement, if the~~

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~~Budget is not approved by either the Board or all Cities~~, then the next year's Budget is the greater of: the total amount of the prior year's Budget; or, the average of the annual Budgets for the prior three (3) years.

4.07 *Line Item Flexibility*. The Executive Director has the authority to shift operation and maintenance funds from one line item of the Budget to another without the approval of the Board or the Cities. The Board has the authority to shift operation and maintenance funds from one line item of the Budget to another without the approval of the Cities.

4.08 *Reserve Fund*. The Budget shall provide for one (1) or more reserve funds for the replacement of scheduled assets, for capital improvements for the Facilities, reasonable reserves for future activities, debt, establishment of a capital reserve, establishment of a reserve for closure and post-closure liability and satisfaction of other legal obligations of the Corporation. Any unencumbered funds remaining at the end of the fiscal year shall be converted to the Reserve Fund. The amount of the Reserve Fund shall be in an amount customary for facilities comparable to the Facilities in both size and use.

4.09 *Other Funds*. Other funds, such as unrestricted charitable donations, may be used by the Board in accordance with the approved budget or, if not anticipated in the Budget, as the Board directs, provided that the limitation set out in Section 4.04, above or a capital cost of $100,000 is not exceeded.

4.10 *Appropriations and Grants*. The Corporation shall have the power to request and accept any appropriations, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision, or municipality in the State, or from any other source.

4.11 *Sale or Transfer of Assets*. The Corporation may not sell, transfer or assign real property or permits of the Corporation, in whole or in part, without the approval of a two-thirds (2/3) majority vote of the entire Board. After approval by the Board, the proposed sale, transfer or assignment of the Assets, the proposed asset transfer ("Asset Transfer") shall be submitted to each City for approval. The Cities will approve or disapprove the Asset Transfer in whole or in part. Failure of the Cities to reject the Asset Transfer approved by the Board on or before the thirtieth (30th) day after submission to the Cities shall be deemed an approval of the Asset Transfer.

4.12 *Financial Assurance*. Unless and until the Corporation can meet the Texas Commission on Environmental Quality ("TCEQ") local government financial test for closure/post-closure obligations, the Cities shall each provide documentation sufficient to provide fifty percent (50%) of the total financial assurance obligation of the Corporation. The Corporation shall reimburse the Cities for costs incurred for the preparation of any such submittal to the TCEQ. During the operating life of the facility, the Corporation shall develop reserve funds sufficient for closure costs and post-closure maintenance costs of the facility.

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ARTICLE V
Indemnification of Directors and Officers

5.01 *Right to Indemnification*. Subject to the limitations and conditions as provided in this Article V and the Articles, each person who was or is made a party, is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "proceeding"), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Corporation to the fullest extent permitted by the Texas Non-Profit Corporation Act and/or the Texas Nonprofit Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlement and reasonable expenses (including without limitation, attorneys' fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article V shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnify hereunder. The rights granted pursuant to this Article V shall be deemed contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

5.02 *Advance Payment*. The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Corporation for the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 5.01 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article V or otherwise.

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5.03 *Indemnification of Employees and Agents*. The Corporation, by adoption of a resolution of the Board, may indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; and the Corporation may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Corporation but who are or were serving at the request of the Corporation as a Director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article V.

5.04 *Appearance as a Witness.* Notwithstanding any other provision of this Article V, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

5.05 *Non-exclusivity of Rights*. The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 5.03 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Articles or these Bylaws, agreement or disinterested Directors or otherwise.

5.06 *Insurance*. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article V.

5.07 *Notification.* Any indemnification of or advance of expenses to a Director or officer in accordance with this Article V shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the ninety (90) day period immediately following the date of the indemnification or advance notification.

5.08 *Savings Clause*. If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer, or any other person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any

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action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VI
Executive Director; Employees

6.01 *Powers and Duties of the Executive Director*.

(a) *Chief Executive*. The Executive Director shall be the chief executive officer of the Corporation and, subject to the control of the Board, he or she shall be in general charge of the Facilities and the properties and affairs of the Corporation. The Executive Director has management and control of the Facilities, the properties and operations of the Corporation, including the powers of a general manager. The Executive Director shall be an ex-officio member of all Board committees, except the Audit Committee. The Executive Director will be responsible for implementing all orders and resolutions of the Board, and all other powers that are not specifically reserved to the Directors or Cities, will be executed by the Executive Director within the general guidelines and policies of the Board and Cities.

(b) *Responsible for Hiring and Supervision of Employees*. The Executive Director shall be responsible for hiring and terminating the employees of the Corporation. All employees hired by the Executive Director shall be terminable at-will and not be provided any term or promise of employment.

(c) *Spending Authority*. The Executive Director is authorized to approve all contracts and expenditures that are not greater than ~~the lowest authorized amount for budgeted contracts and expenditures by the city managers of the Cities~~$50,000 without Board approval, as long as funds are budgeted and are available for ~~the~~such expenditure.

(d) *Annual Budget*. The Executive Director is responsible for the preparation of the Corporation's annual budget.

(e) *Annual Business Plan*. The Executive Director shall prepare a Corporation business plan (the "Business Plan") on an annual basis for review and approval by the Board. The Business Plan shall include such items and matters required by the Board and, at a minimum, shall include ~~the following: (i) performance measures and benchmarks; (ii) short term and long term waste stream tonnage to be received; (iii) anticipated new customers and goals;~~

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~~(iv) compaction goals; (v) short and long range capacities and life expectancy; (vi) possible future activities; and (vii) short and long term compost and other waste diversion strategies.~~all requirements set forth in Section 6.01 of the Amended and Restated Solid Waste Operations Agreement approved by the Corporation and the Cities ("Operations Agreement").

6.02 *Corporation Employees*.

(a) The Executive Director shall be a full time employment position of the Corporation.

(b) ~~For the initial operation of the Facilities, the Corporation shall utilize~~ Any other employees of the ~~Cities pursuant to the Operation Agreement. Any new employees~~ Corporation (other than the Executive Director) ~~in excess of the persons employed from the Cities on a contract basis pursuant to the Operation Agreement~~ shall be employees of the Corporation hired by the Executive Director.

~~(b)~~

ARTICLE VII
Code of Ethics

7.01 *Policy and Purposes*.

(a) It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

(b) This Code of Ethics has been adopted as part of the Corporation's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

7.02 *Conflicts of Interest.*

(a) *Abide by State and Criminal Laws for Public Officers.* All Directors, officers and employees shall abide by the state civil and criminal laws regarding conflict of interest, official misconduct

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and other regulations and restrictions involving their official duties.

(b) *Disclosure and Abstention*. It is the intent of these Bylaws, that the Directors, Executive Director and officers shall take all steps to avoid the appearance of impropriety in the conduct of their affairs on behalf of the Corporation. This includes not engaging in any conduct or business that may be deemed to compromise their independent judgment in executing their duties as Corporation officials. In the event that a Director, officer or the Executive Director has any financial or equitable interest, direct or indirect, in a transaction that comes before the Board, or a committee or the Executive Director, the affected Director or officer, must:

I. disclose that interest in writing and file it with the Board Secretary; and

II. refrain from discussing or voting on the same.

(c) *Restrictions on Executive Director*. The Executive Director is precluded from having any financial or equitable interest in any contract, service (other than such person's employment) or acquisition that is subject to such person's approval or that the subordinates of the Executive Director may approve or monitor.

(d) *Definition of Financial Interest/Relative*. The financial interest contemplated under (b) and (c) of this Section requires that the affected person who is the Director, officer, or Executive Director or their relative receive an actual financial benefit from the transaction with the Corporation. A relative is a person related within the first degree of consanguinity or affinity to the Director, officer, or Executive Director. A financial or equitable interest does not include the following:

i. An ownership in the entity transacting business with the Corporation where the ownership interest is less than one percent (1%).

ii. Compensation as an employee, officer or director of the entity transacting business with the Corporation where such compensation is not affected by the entity's transaction with the Corporation.

iii. An investment or ownership in a publicly held company in an amount less than TEN THOUSAND DOLLARS ($10,000.00).

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iv. An employee of a public entity serving on the Board.

7.03 *Acceptance of Gifts*. No Director or officer shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or officer shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the Director's or officer's discretion. As used here, "benefit" does not include:

(a) a fee prescribed by law to be received by a Director or officer or any other benefit to which the Director or officer is lawfully entitled or for which he gives legitimate consideration in capacity other than as a Director or officer;

(b) a gift or other benefit conferred on an account of kinship or a personal, professional, or business relationship independent of the official status of the Director or officer;

(c) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

1) not more than one honorarium is received from the same person in a calendar year;

2) not more than one honorarium is received for the same service; and

3) the value of the honorarium does not exceed $250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or officer in performance of the services.

(d) A benefit consisting of food, lodging, transportation, or entertainment accepted as a guest is reported as may be required by law.

7.04 *Nepotism*. No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree of consanguinity to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty at least thirty (30) days prior to the appointment of the Director or officer so appointing or voting.

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ARTICLE VIII
Miscellaneous Provisions

8.01 *Seal*. The seal of the Corporation shall be such as may be from time to time approved by the Board. The seal of the Corporation shall not be required to be placed on a document in order for the document to be considered a valid act or agreement of the Corporation.

8.02 *Notice and Waiver of Notice*. Whenever any notice, other than public notice of a meeting given to comply with the Open Meetings Act, is required to be given under the provisions of these Bylaws, such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. If transmitted by facsimile or email such notice shall be deemed to be delivered upon successful transmission of the facsimile or email. A Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting unless such attendance is for the purpose of objecting to the failure of notice. A waiver of notice signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

8.03 *Gender*. References herein to the masculine gender shall also refer to the feminine in all appropriate cases and vice versa.

8.04 *Reports*.

(a) No later than ~~ninety (90~~thirty (30) days following the ~~end~~receipt of ~~each fiscal year~~the final Annual Audit, the Board shall submit ~~to each City the following: (1) Program of Service; and (2)~~an Annual Report to each City.

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(b) ~~The~~No later than forty-five (45) days after the end of each month, the Executive Director shall provide a monthly operational and financial report to the Board and the Technical Advisory Committee, inclusive of a report of all contracts entered into and expenditures made by the Executive Director on behalf of the Corporation pursuant to authority of Section 6.01 (c) of these Bylaws.

8.05 *Distribution of Net Income; Return of Funds*. Notwithstanding Section 431.107 of the Act entitling the Cities at all times to have the right to equally receive the income earned by the Corporation, any income earned by the Corporation after payment of reasonable expenses, reasonable reserves for future activities, debt establishment of a capital reserve, establishment of a reserve for closure and post-closure liability, and

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satisfaction of other legal obligations of the Corporation shall be retained by the Corporation and applied equitably as a credit to the charges to Cities for tipping fees and other fees and costs charged to Cities for the disposal of municipal solid waste at the Corporation's facilities and/or other services provided by the Corporation to the Cities.

8.06 *City Access to Records of Corporation*. Notwithstanding the provisions of the Public Information Act or any exceptions contained therein to disclosure and the rights or limitations thereof regarding the review of records of Texas non-profit corporations, the Cities shall have a special right to review and obtain copies of the records of the Corporation, regardless of format, upon reasonable notice and during regular business hours of the Corporation; provided, however, such special right of access to the Cities shall not apply to records to which law or regulation expressly prohibit disclosure to third parties that would by definition include the Cities.

8.07 *Expansion or Modification of Services*. The Corporation may not expand, reduce or modify the current municipal solid waste landfill and compost services consisting of two municipal solid waste landfills and compost facility (collectively referred to as the "BVSWMA Services") without the approval of a two-thirds (2/3) vote of the entire Board. The Executive Director shall present proposed expansions or modifications of service to the Technical Advisory Committee and record comments and suggestions to such proposals prior to presentation to the Board. After approval by the Board, the proposed expansion, reduction or modification of the BVSWMA Services as the case may be the proposed expansion, reduction or modification (the "BVSWMA Services Modification") shall be submitted to each City for approval. Failure of a City to reject the BVSWMA Services Modification approved by the Board on or before the thirtieth (30th) day after submission to such City shall be deemed an approval of the BVSWMA Services Modification. The Cities may approve or disapprove the BVSWMA Services Modification in whole or in part. Failure of a City to reject any portion of the BVSWMA Services Modification within the thirty (30) day period shall be deemed an approval of such portion of the BVSWMA Services Modification.

8.08 *Amendments*. A proposal to alter, amend or repeal these Bylaws shall be made by the affirmative vote of a majority of the entire Board at any annual or regular meeting, or at any special meeting if notice of the proposed amendment be contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by resolution of each City to be effective.

8.09 *Days*. Any reference to a number of days herein shall be determined as calendar days unless specifically identified as business days.

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